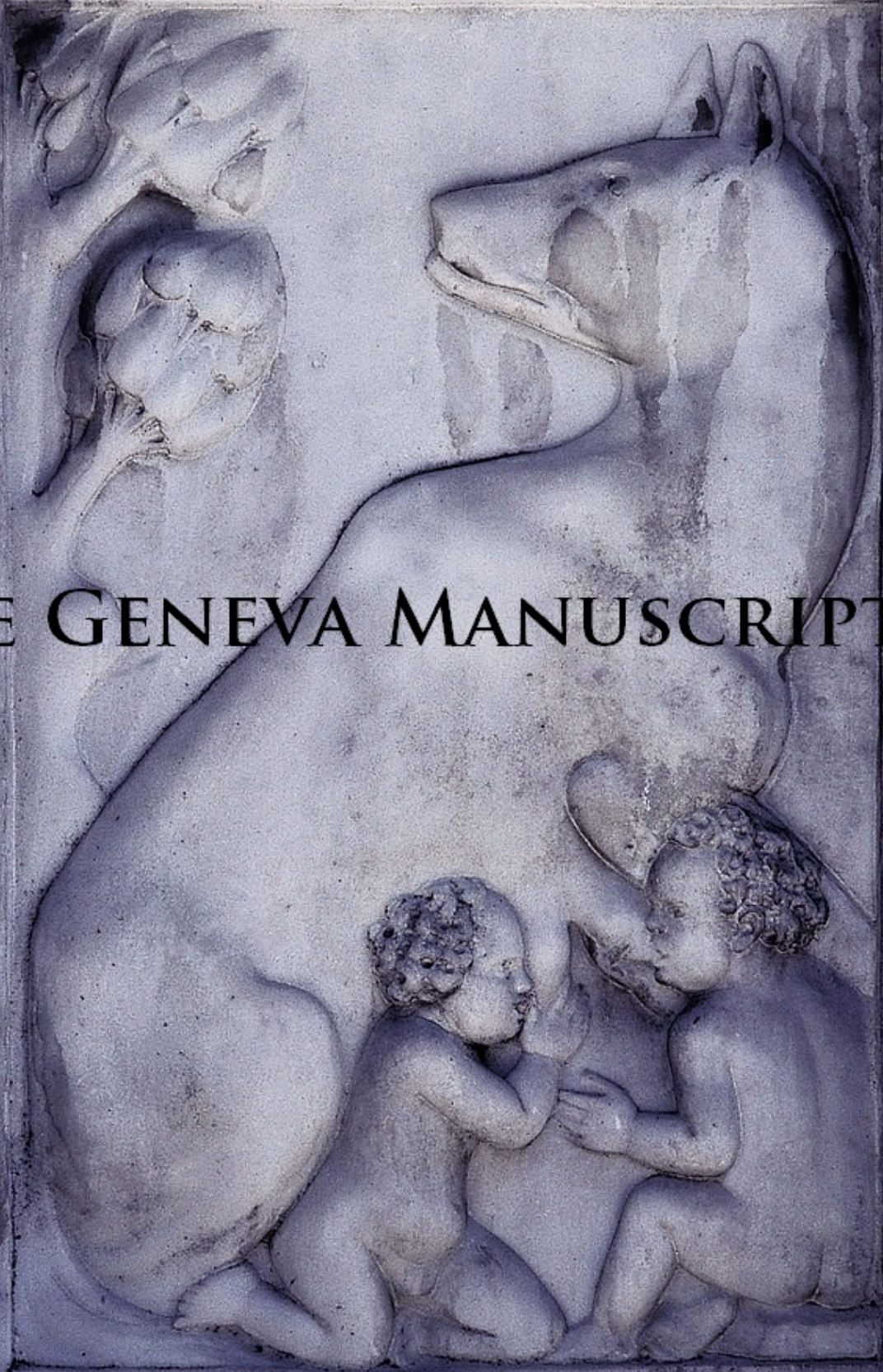


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THE GENEVA MANUSCRIPT



ON THE SOCIAL CONTRACT

OR

ESSAY ABOUT THE FORM OF THE REPUBLIC¹

*(First Version, commonly called the
Geneva Manuscript)*

BOOK I

PRELIMINARY CONCEPTS OF THE SOCIAL BODY

Chapter I: Subject of this Work²

So many famous authors have dealt with the maxims of government and the rules of civil right that there is nothing useful to say on this subject that has not already been said. But perhaps there would be greater agreement, perhaps the best relationships of the social body would have been more clearly established if its nature had been better determined at the outset. This is what I have tried to do in this work. It is, therefore, not a question here of the administration of this body, but of its constitution. I make it live, not act. I describe its mechanisms and its parts, and set them in place. I put the machine in running order. Wiser men will regulate its movements.

Chapter II: On the General Society of the Human Race³

Let us begin by inquiring why the necessity for political institutions arises.

Man's force is so proportioned to his natural needs and his primitive state that the slightest change in this state and increase in his needs make

the assistance of his fellow men necessary; and when his desires finally encompass the whole of nature, the cooperation of the entire human race is barely enough to satisfy them. Thus the same causes that make us wicked also make us slaves, and reduce us to servitude by depraving us. The feeling of our weakness comes less from our nature than from our cupidity. Our needs bring us together in proportion as our passions divide us, and the more we become enemies of our fellow men, the less we can do without them.⁴ Such are the first bonds of general society; such are the foundations of that universal goodwill, which seems to be stifled as a feeling once recognized as a necessity, and from which everyone would like to benefit without being obliged to cultivate it. As for our natural identity, its effect here is null because it is as much a subject of quarrel as of union for men, and is as frequently a source of competition and jealousy as of mutual understanding and agreement.

This new order of things gives rise to a multitude of relationships lacking order, regulation and stability, which men alter and change continually—a hundred working to destroy them for one working to establish them. And since the relative existence of a man in the state of nature is dependent on a thousand other continually changing relationships, he can never be sure of being the same for two moments in his life. Peace and happiness are only momentary for him; nothing is permanent except the misery that results from all these vicissitudes. Even if his feelings and ideas could rise to the love of order and the sublime concepts of virtue, it would be impossible for him ever to apply these principles with certainty in a state of things that would not allow him to discern either good or evil, either the decent man or the wicked one.

The kind of general society that mutual needs can engender does not, therefore, offer any effective assistance to man once he has become miserable, or at least it gives new force to him who already has too much, whereas the weak man—lost, stifled, crushed in the multitude—finds no place of refuge, no source of support for his weakness, and finally perishes as a victim of the deceptive union from which he expected happiness.

[Once one is convinced that among the motives causing men to unite by voluntary bonds nothing relates to the union for its own sake; that far from proposing a goal of shared felicity from which each individual would derive his own, one man's happiness is the other's misfortune; if, finally, one sees that rather than all striving toward the general good, men only come together because all are moving away from it; then one must also feel that even if such a state could subsist, it would only be a source of crimes and miseries for men, each of whom would see only his interest, follow only his inclinations, and listen only to his passions.]⁵

Thus nature's gentle voice is no longer an infallible guide for us, nor is the independence we have received from her a desirable state. We lost peace

and innocence forever before we had appreciated their delights. Unfelt by the stupid men of earliest times, lost to the enlightened men of later times, the happy life of the golden age was always a state foreign to the human race, either because it went unrecognized when humans could have enjoyed it or because it had been lost when humans could have known it.⁶

There is even more. Even had this perfect independence and unregulated freedom remained joined to ancient innocence, it would always have had an essential vice, harmful to the development of our most excellent faculties, namely the lack of that liaison between the parts which constitutes the whole. The earth would be covered with men between whom there was almost no communication. We would have some similarities but none would unite us. Everyone would remain isolated among the others, and would think only of himself. Our understanding would be unable to develop. We would live without feeling anything; we would die without having lived. Our total happiness would consist in not knowing our misery. There would be neither goodness in our hearts nor morality in our actions, and we would never have enjoyed the soul's most delicious feeling, which is love of virtue.

[Certainly the term *human race* suggests only a purely collective idea which assumes no real union among the individuals who constitute it. Let us add to it, if you wish, this supposition, and conceive of the human race as a moral person having—along with a feeling of common existence which gives it individuality and constitutes it as one—a universal motivation which makes each part act for an end that is general and relative to the whole. Let us conceive that this common feeling is humanity, and that natural law is the active principle of the entire machine. Next let us observe what results from the constitution of man in his relations with his fellow men, and completely to the contrary of what we have supposed, we will find that the development of society stifles humanity in men's hearts by awakening personal interest, and that concepts of the natural law, which should rather be called the law of reason, begin to develop only when the prior development of the passions renders all its precepts impotent. It is apparent from this that the so-called social treaty dictated by nature is a true illusion, since the conditions for it are always either unknown or impracticable, and men must necessarily be in ignorance of them or violate them.⁷

If the general society did exist somewhere other than in the systems of philosophers, it would be, as I have said, a moral being with qualities separate and distinct from those of the particular beings constituting it, somewhat like chemical compounds which have properties that do not belong to any of the elements composing them. There would be a universal language which nature would teach all men and which would be their first means of mutual communication. There would be a kind of central nervous system which would connect all the parts. The public good or ill would not be merely the sum of private goods and ills as in a simple aggregation, but would

lie in the liaison uniting them. It would be greater than this sum, and public felicity, far from being based on the happiness of private individuals, would itself be the source of this happiness.]

It is false that in the state of independence, reason leads us to cooperate for the common good out of a perception of our own interest. Far from there being an alliance between private interest and the general good, they are mutually exclusive in the natural order of things, and social laws are a yoke that each wants to impose on the other without having to bear himself. "I am aware that I bring horror and confusion to the human species," says the independent man who is stifled by the wise man, "but either I must be unhappy or I must cause others to be so, and no one is dearer to me than myself."⁸ I would try in vain," he might add, "to reconcile my interest with that of another man. Everything you tell me about the advantages of the social law would be fine if while I were scrupulously observing it toward others, I were sure that all of them would observe it toward me. But what assurance of this can you give me, and could there be a worse situation for me than to be exposed to all the ills that stronger men would want to cause me without my daring to make up for it against the weak? Either give me guarantees against all unjust undertakings or do not expect me to refrain from them in turn. You try vainly to tell me that in renouncing the duties that natural law imposes on me, I deprive myself at the same time of its rights and that my violence will justify every violence that others would like to use against me. I am all the more willing to agree because I fail to see how my moderation could protect me. Furthermore, it will be my business to get the strong on my side, by sharing with them the spoils from the weak. This would be better than justice for my own advantage and for my security." The proof that this is how the enlightened and independent man would have reasoned is that this is how every sovereign society accountable for its behavior only to itself does reason.

What solid answer can be made to such a speech without bringing religion to the aid of morality and making God's will intervene directly to bind the society of men? But the sublime concepts of a God of the wise, the gentle laws of brotherhood He imposes upon us, the social virtues of pure souls—which are the true cult He desires of us—will always escape the multitude. Gods as senseless as itself will always be made for the multitude, which will sacrifice worthless things in honor of these Gods in order to indulge in a thousand horrible, destructive passions. The whole earth would be covered with blood and the human race would soon perish if philosophy and laws did not hold back the furies of fanaticism and if the voice of men was not louder than that of the Gods.

Indeed, if concepts of the great Being and of natural law were innate in every heart, it was surely superfluous to teach them both explicitly. It was teaching us what we already knew, and the way it was done was far better suited to make us forget. If these concepts were not innate, all those to whom God did not give them are excused from knowing them. Ever since special

teaching became necessary, each people has its own ideas which it is taught are the only valid ones, and which lead to carnage and murder more often than to harmony and peace.

Let us, therefore, set aside the sacred precepts of the various religions, whose abuse causes as many crimes as their use can avoid, and give back to the philosopher the examination of a question that the theologian has never dealt with except to the detriment of the human race.⁹

But the philosopher will send me back to the human race itself, which alone ought to decide because the greatest good of all is the only passion it has. He will tell me that the individual should address himself to the general will in order to find out to what extent he should be man, citizen, subject, father, child, and when it is suitable for him to live and to die.¹⁰ "I admit that I see in this the rule that I can consult, but I do not yet see," our independent man will say, "the reason for subjecting myself to this rule. It is not a matter of teaching me what justice is, but of showing me what interest I have in being just." Indeed, no one will deny that the general will in each individual is a pure act of the understanding, which reasons in the silence of the passions about what man can demand of his fellow man and what his fellow man has the right to demand of him. But where is the man who can be so objective about himself; and if concern for his self-preservation is nature's first precept, can he be forced to look in this manner at the species in general in order to impose on himself duties whose connection with his particular constitution is not evident to him? Don't the preceding objections still exist and doesn't it still remain to be seen how his personal interest requires his submission to the general will?

Furthermore, since the art of generalizing ideas in this way is one of the most difficult and belated exercises of human understanding, will the average man ever be capable of deriving his rules of conduct from this manner of reasoning? And when it would be necessary to consult the general will concerning a particular act, wouldn't it often happen that a well-intentioned man would make a mistake about the rule or its application, and follow only his inclination while thinking that he is obeying the law? What will he do, then, to avoid error? Will he listen to the inner voice? But it is said that this voice is formed only by the habit of judging and feeling within society and according to its laws. It cannot serve, therefore, to establish them. And then it would be necessary that there had never arisen in his heart any of those passions that speak louder than conscience, muffle its timid voice, and cause philosophers to assert that this voice is nonexistent.¹¹ Will he consult the written principles of right, the social actions of all peoples, the tacit conventions even of the enemies of the human race? The initial difficulty still remains, and it is only from the social order established among us that we derive ideas about the one we imagine. We conceive of the general society on the basis of our particular societies; the establishment of small republics makes us think about the large one, and we do not really begin to become

men until after we have been citizens. It is apparent from this what should be thought of those supposed cosmopolites who, justifying their love of the homeland by means of their love of the human race, boast of loving everyone in order to have the right to love no one.

What reasoning demonstrates to us in this regard is perfectly confirmed by the facts, and simply by turning back to very ancient times one easily sees that the healthy ideas of natural right and the brotherhood of all men were disseminated rather late and made such slow progress in the world that it was only Christianity that generalized them sufficiently. And even then the ancient acts of violence, not only against declared enemies but also against anyone who was not a subject of the Empire, can still be found authorized in many respects in the laws of Justinian, so that the humanity of the Romans extended no further than their domination.

Indeed, it was long believed, as Grotius remarks, that it was permissible to rob, pillage, and mistreat foreigners, and especially barbarians, until they were reduced to slavery. This led to the questioning of strangers, without offending them, as to whether they were brigands or pirates, because this trade, far from being ignominious, was then considered honorable. The first heroes, like Hercules and Theseus, who made war on brigands, nonetheless engaged in brigandage themselves, and the Greeks often used the term peace treaties for treaties made between peoples who were not at war. The words foreigners and enemies were long synonymous for several ancient peoples, even among the Latins. *Hostis enim*, says Cicero, *apud majores nostros dicebatur, quem nunc peregrinum dicimus*.¹² Hobbes's mistake, therefore, is not that he established the state of war among men who are independent and have become sociable, but that he supposed this state natural to the species and gave it as the cause of the vices of which it is the effect.

But although there is no natural and general society among men, although men become unhappy and wicked in becoming sociable, although the laws of justice and equality mean nothing to those who live both in the freedom of the state of nature and subject to the needs of the social state, far from thinking that there is neither virtue nor happiness for us and that heaven has abandoned us without resources to the depravation of the species, let us attempt to draw from the ill itself the remedy that should cure it. Let us use new associations to correct, if possible, the defect of the general association. Let our violent speaker himself judge its success.¹³ Let us show him in perfected art the reparation of the ills that the beginnings of art caused to nature. Let us show him all the misery of the state he believed happy, all the falseness in the reasoning he believed solid. Let him see the value of good actions, the punishment of bad ones, and the sweet harmony of justice and happiness in a better constituted order of things. Let us enlighten his reason with new insights, warm his heart with new feelings; and let him learn to enlarge upon his being and his felicity by sharing them with his fellow men. If my zeal does not blind me in this undertaking, let us not doubt

that with a strong soul and an upright mind, this enemy of the human race will at last abjure his hate along with his errors; that reason which led him astray will bring him back to humanity; that he will learn to prefer his properly understood interest to his apparent interest; that he will become good, virtuous, sensitive, and finally—to sum it all up—rather than the ferocious brigand he wished to become, the most solid support of a well-ordered society.

Chapter III: On the Fundamental Compact¹⁴

Man was/is born free, and nevertheless everywhere he is in chains. One who believes himself the master of others is nonetheless a greater slave than they. How did this change occur? No one knows. What can make it legitimate? It is not impossible to say.¹⁵ If I were to consider only force, as others do, I would say that as long as the people is constrained to obey and does so, it does well; as soon as it can shake off the yoke and does so, it does even better. For in recovering its freedom by means of the same right used to steal it, either the people is well justified in taking it back, or those who took it away were not justified in doing so. But the social order is a sacred right that serves as a basis for all the others. However, this right does not have its source in nature; it is therefore based on a convention. The problem is to know what this convention is and how it could have been formed.

As soon as man's needs exceed his faculties and the objects of his desire expand and multiply, he must either remain eternally unhappy or seek a new form of being from which he can draw the resources he no longer finds in himself. As soon as obstacles to our self-preservation prevail, by their resistance, over the force each individual can use to conquer them, the primitive state can no longer subsist and the human race would perish if art did not come to nature's rescue. Since man cannot engender new forces but merely unite and direct existing ones, he has no other means of self-preservation except to form, by aggregation, a sum of forces that can prevail over the resistance; set them to work by a single motivation; make them act conjointly; and direct them toward a single object. This is the fundamental problem which is solved by the institution of the State.

If, then, these conditions are combined and everything that is not of the essence of the social compact is set aside, one will find that it can be reduced to the following terms: "Each of us puts his will, his goods, his force, and his person in common, under the direction of the general will, and in a body we all receive each member as an inalienable part of the whole."

Instantly, in place of the private person of each contracting party, this act of association produces a moral and collective body, composed of as many members as there are voices in the assembly, and to which the common self gives formal unity, life, and will. This public person, formed thus by the union of all the others, generally assumes the name *body politic*, which its

members call *State* when it is passive, *Sovereign* when active, *Power* when comparing it to similar bodies. As for the members themselves, they take the name *People* collectively, and individually are called *Citizens* as members of the City or participants in the sovereign authority, and *Subjects* as subject to the laws of the State. But these terms, rarely used with complete precision, are often mistaken for one another, and it is enough to know how to distinguish them when the meaning of discourse so requires.

This formula shows that the primitive act of confederation includes a reciprocal engagement between the public and private individuals, and that each individual, contracting with himself so to speak, finds that he is doubly engaged, namely toward private individuals as a member of the sovereign and toward the sovereign as a member of the State. But it must be noted that the maxim of civil right that no one can be held responsible for engagements toward himself cannot be applied here, because there is a great difference between being obligated to oneself, or to a whole of which one is a part. It must further be noted that the public deliberation that can obligate all of the subjects to the sovereign—due to the two different relationships in which each of them is considered—cannot for the opposite reason obligate the sovereign toward itself, and that consequently it is contrary to the nature of the body politic for the sovereign to impose on itself a law that it cannot break. Since the sovereign can only be considered in a single relationship, it is then in the situation of a private individual contracting with himself. It is apparent from this that there is not, nor can there be, any kind of fundamental law that is obligatory for the body of people. This does not mean that this body cannot perfectly well enter an engagement toward another, at least insofar as this is not contrary to its nature, because with reference to the foreigner, it becomes a simple being or individual.

As soon as this multitude is thus united in a body, one could not harm any of its members without attacking the body in some part of its existence, and it is even less possible to harm the body without the members feeling the effects. For in addition to the common life in question, all risk also that part of themselves which is not currently at the disposition of the sovereign and which they enjoy in safety only under public protection.¹⁶ Thus duty and interest equally obligate the two contracting parties to be of mutual assistance, and the same persons should seek to combine in this double relationship all the advantages that are dependent on it. But there are some distinctions to be made insofar as the sovereign, formed solely by the private individuals composing it, never has any interest contrary to theirs, and as a consequence the sovereign power could never need a guarantee toward the private individuals, because it is impossible for the body ever to want to harm its members. The same is not true of the private individuals with reference to the sovereign, for despite the common interest, nothing would answer for their engagements to the sovereign if it did not find ways to be assured of

their fidelity. Indeed, each individual can, as a man, have a private will contrary to or differing from the general will he has as a citizen. His absolute and independent existence can bring him to view what he owes the common cause as a free contribution, the loss of which will harm others less than its payment burdens him; and considering the moral person of the State as an imaginary being because it is not a man, he might wish to enjoy the rights of the citizen without wanting to fulfill the duties of a subject, an injustice whose spread would soon cause the ruin of the body politic.

In order for the social contract not to be an ineffectual formula, therefore, the sovereign must have some guarantees, independently of the consent of the private individuals, of their engagements toward the common cause. The oath is ordinarily the first of such guarantees, but since it comes from a totally different order of things and since each man, according to his inner maxims, modifies to his liking the obligation it imposes on him, it is rarely relied on in political institutions; and it is with reason that more real assurances, derived from the thing itself, are preferred. So the fundamental compact tacitly includes this engagement, which alone can give force to all the others: that whoever refuses to obey the general will shall be constrained to do so by the entire body. But it is important here to remember carefully that the particular, distinctive character of this compact is that the people contracts only with itself; that is, the people in a body, as sovereign, with the private individuals composing it, as subjects—a condition that creates all the ingenuity and functioning of the political machine, and alone renders legitimate, reasonable, and without danger engagements that without it would be absurd, tyrannical, and subject to the most enormous abuse.

This passage from the state of nature to the social state produces a remarkable change in man, by substituting justice for instinct in his behavior and giving his actions moral relationships which they did not have before. Only then, when the voice of duty replaces physical impulse, and right replaces appetite, does man, who until that time only considered himself, find that he is forced to act upon other principles and to consult his reason before heeding his inclinations. But although in this state he deprives himself of several advantages given him by nature, he gains such great ones, his faculties are exercised and developed, his ideas broadened, his feelings ennobled, and his whole soul elevated to such a point that if the abuses of this new condition did not often degrade him even beneath the condition he left, he ought ceaselessly to bless the happy moment that tore him away from it forever, and that changed him from a stupid, limited animal into an intelligent being and a man.

Let us reduce the pros and cons to easily compared terms. What man loses by the social contract is his natural freedom and an unlimited right to everything he needs; what he gains is civil freedom and the proprietorship of everything he possesses. In order not to be mistaken in these estimates, one

must distinguish carefully between natural freedom, which is limited only by the force of the individual, and civil freedom, which is limited by the general will; and between possession, which is only the effect of force or the right of the first occupant, and property, which can only be based on a legal title.

On Real Estate

Each member of the community gives himself to it at the moment of its formation, just as he currently is—both himself and all his force, which includes the goods he holds. It is not that by this act possession, in changing hands, changes its nature and becomes property in the hands of the sovereign. But as the force of the State is incomparably greater than that of each private individual, public possession is by that very fact stronger and more irrevocable, without being more legitimate, at least in relation to foreigners. For in relation to its members, the State is master of all their goods through a solemn convention, the most sacred right known to man. But with regard to other States, it is so only through the right of the first occupant, which it derives from the private individuals, a right less absurd, less odious than that of conquest and yet which, when well examined, proves scarcely more legitimate.

So it is that the combined and contiguous lands of private individuals become public territory, and the right of sovereignty, extending from the subjects to the ground they occupy, comes to include both property and persons, which places those who possess land in a greater dependency and turns even their force into security for their loyalty. This advantage does not appear to be well known to ancient kings, who seem to have considered themselves leaders of men rather than masters of the country. Thus they only called themselves Kings of the Persians, the Scythians, the Macedonians, whereas ours more cleverly call themselves Kings of France, Spain, England. By thus holding the land, they are quite sure to hold its inhabitants.

What is admirable in this alienation is that far from plundering private individuals of their goods, by accepting them the community thereby only assures them of legitimate disposition, changes usurpation into a true right, and use into property. Then, with their title respected by all the members of the State and maintained with all its force against foreigners, through a transfer that is advantageous to the community and even more so to themselves, they have, so to speak, acquired all they have given—an enigma easily explained by the distinction between the rights of the sovereign and of the proprietor to the same resource.

It can also happen that men start to unite before possessing anything, and that subsequently taking over a piece of land sufficient for all, they use it in common or else divide it among themselves either equally or according to certain proportions established by the sovereign. But however the acquisition is made, the right of each private individual to his own goods is always subor-

dinate to the community's right to all, without which there would be neither solidity in the social bond nor real force in the exercise of sovereignty.

I shall end this chapter with a comment that should serve as the basis of the whole social system. It is that rather than destroying natural equality, the fundamental compact on the contrary substitutes a moral and legitimate equality for whatever physical inequality nature may have placed between men, and that although they may be naturally unequal in force or in genius, they all become equal through convention and by right.

Chapter IV: What Sovereignty Consists of and What Makes it Inalienable¹⁷

There is, therefore, in the State, a common force that supports it and a general will that directs this force, and the application of the one to the other constitutes sovereignty. It is apparent from this that the sovereign is by its nature only a moral person, that it has only an abstract and collective existence, and that the idea attributed to this word cannot be likened to that of a simple individual. But since this is one of the most important propositions in the whole matter of political right, let us try to make it clearer.

I believe I can establish as an incontestable maxim that the general will alone can guide the forces of the State according to the end for which it was instituted, which is the common good. For if the opposition of private interests made the establishment of civil societies necessary, it is the agreement of these same interests that made it possible. It is what these different interests have in common that forms the social bond, and if there were not some point at which all these interests are in agreement, society could not exist. Now since the will always tends toward the good of the being who wills, since the private will always has as its object private interest and the general will common interest, it follows that this last alone is or ought to be the true motivation of the social body.

I agree that it is possible to question whether a private will could agree in all things with the general will, and consequently, assuming that such a private will existed, whether the entire direction of the public force could without drawback be confided to it. But without anticipating the solutions to this question that I shall give later, everyone should see by this time that a private will substituted for the general will is superfluous when they agree and harmful when they are opposed. One should also see that such a supposition is absurd and impossible by the nature of things, because private interest always tends toward preferences and public interest toward equality.

Furthermore, even if the two wills were found to be momentarily in agreement, one could never be sure that this agreement would last through the following moment and that no opposition would ever arise between them. The order of human things is subject to so many revolutions, and ways of thinking as well as ways of being changed so easily, that it would be fool-

hardy to affirm that one will want tomorrow what one wants today; and if the general will is less subject to this inconstancy, nothing can protect the private will from it. Thus, even if the social body could say at a given time, "I now want everything that a particular man wants," it could never say in speaking about the same man, "What he will want tomorrow I shall still want." Now the general will that should direct the State is not that of a past time but of the present moment, and the true characteristic of sovereignty is that there is always agreement on time, place, and effect between the direction of the general will and the use of public force, an agreement one can no longer be sure of as soon as another will, whatever it may be, commands this force. It is true that in a well-regulated State, an act of the will of the people can always be inferred to continue in effect as long as the people does not destroy it by a contrary act. But it is always by virtue of current, tacit consent that the prior act continues to be in effect. The conditions necessary in order to presume this consent will be seen in what follows.

Just as the action of the soul on the body with respect to man's constitution is unfathomable in philosophy, so the action of the general will on the public force with respect to the constitution of the State is unfathomable in politics. Here, all legislators have gone astray. In what follows I shall present the best means that have been used for this, and I shall only trust evaluation based on reasoning insofar as this is justified by experience. If willing and doing are the same for every free being, and if the will of such a being measures exactly the amount of his force that he uses to accomplish it, it is evident that in everything that does not go beyond the public power, the State would always faithfully execute everything that the sovereign wills just the way it is willed—provided that the will was as simple an act and the action as immediate an effect of this same will in the civil body as they are in the human body.

But even if the bond of which I speak were as well established as possible, all the difficulties would not disappear. The works of men—always less perfect than those of nature—never go so directly toward their end. In politics as in mechanics one cannot avoid acting more weakly or more slowly, and losing force or time. The general will is rarely the will of all, and the public force is always less than the sum of the private forces, so that in the mechanism of the State there is an equivalent of friction in machines, which one must know how to reduce to the least possible amount and which must at least be calculated and subtracted in advance from the total force, so that the means used will be exactly proportionate to the effect desired. But without going into this difficult research which constitutes the science of the legislator, let us finish determining the idea of the civil State.

Chapter V: False Concepts of the Social Bond¹⁸

There are a thousand ways to bring men together; there is only one way to unite them. That is why in this work I give only one method for the formation of political societies, although in the multitude of aggregations that

now exist under this name, there may not even be two that were formed in the same manner and not one according to the manner I establish. But I seek right and reason, and do not argue over facts. Using these rules, let us try to find out how one should judge other paths to civil association, such as the ones supposed by most of our writers.

1. It is readily conceived that the natural authority of the father of the family over his children extends even beyond their weakness and need, and that as they continue to obey him, they end up doing through habit and gratitude what they did at first through necessity; and the bonds that can unite the family are easy to see. But that when the father dies, one of the brothers usurps from brothers of comparable age, and even from outsiders, the power that the father had over all, is without either reason or foundation. For the natural rights of age, force, paternal tenderness, and the duties of filial gratitude are all lacking in this new order, and the brothers are imbeciles or unnatural to subject their children to the yoke of a man who, according to the natural law, should give every preference to his own. One no longer sees in this situation the ties that unite leader and members. Force acts alone and nature no longer speaks.

Let us stop for a moment on this parallel emphasized by so many authors. First, even if there were as many similarities between the State and the family as they claim, it would not necessarily follow that the rules of conduct appropriate to one of these two societies would be suited to the other. They differ too much in size to be administered in the same way, and there will always be a very great difference between household government, where the father sees everything for himself, and civil government, where the leader sees almost nothing except through the eyes of others. For things to become equal in this respect, the talents, force, and faculties of the father would have to increase in relation to the size of his family, and the soul of a powerful monarch would have to be, compared to that of the ordinary man, what the extent of his empire is to the inheritance of a private individual.

But how could the government of the State be like that of the family, whose principle is so different? Because the father is physically stronger than his children, paternal power is correctly thought to be established by nature for as long as they need his help. In the large family, all of whose members are naturally equal, political authority—purely arbitrary as regards its institution—can only be founded on conventions, and the magistrate can only command the citizen by virtue of the laws. The father's duties are dictated by natural feelings, and in such a way that he can rarely disobey. Leaders have no similar rule and are not really obligated to the people except for what they have promised to do, which the people has the right to require them to carry out. Another even more important difference is that since the children have nothing except what they receive from the father, it is evident that all property rights belong to, or emanate from, him. It is just the opposite in the large family, where the general administration is only established in order to assure private possession, which is antecedent to it. The main object of the

entire household's work is to preserve and increase the father's patrimony, so that some day he can divide it among his children without impoverishing them, whereas the prince's wealth, far from adding anything to the welfare of private individuals, almost always costs them their peace and plenty. Finally, the small family is destined to die out and to split up someday into several other similar families, whereas the large one is made to last always in the same state. The former must increase in order to multiply, whereas not only does it suffice for the latter to preserve itself, but it can even be proved that all growth is more harmful than useful to it.

For several reasons derived from the nature of things, the father should command in the family. First, the authority of the father and mother should not be equal; rather there must be a single government, and when opinions are divided, there must be a dominant voice that decides. Second, however slight the incapacitations peculiar to the wife are thought to be, since they are always an inactive period for her, this is sufficient reason to exclude her from primacy, because when the balance is perfectly equal, the smallest thing is enough to tip it. Furthermore, the husband should oversee his wife's conduct, because it is important to him that the children he is forced to recognize do not belong to anyone other than himself. The wife, who has no such thing to fear, does not have the same right over her husband. Third, children should obey their father, at first through necessity, later through gratitude. After having their needs met by him for half their lives, they should devote the other half to attending to his needs. Fourth, as regards domestic servants, they too owe him their services in return for the livelihood he gives them, unless they break the exchange when it no longer suits them. I do not speak of slavery, because it is contrary to nature and nothing can authorize it.

Nothing of this kind exists in political society. Far from the leader's having a natural interest in the happiness of private individuals, it is not unusual for him to seek his own happiness in their misery. Is the crown hereditary? Often a child is in command of men.* Is it elective? Elections present a thousand drawbacks. And in either case all the advantages of paternity are lost. If you have only one leader, you are at the discretion of a master who has no reason to love you. If you have several, you must simultaneously bear their tyranny and their dissensions. In short, abuses are inevitable and their consequences disastrous in all societies, where the public interest and the laws have no natural force and are continuously assailed by the personal interest and passions of leader and members.

Although the functions of the father of a family and of the prince should be directed toward the same goal, the paths they take are so different, their duties and rights are so dissimilar, that one cannot confuse them without

*French law on the coming of age of kings proves that very sensible men and long experience have taught peoples that it is a greater misfortune to be governed by agencies than by children.

forming the most erroneous ideas about the principles of society, and without making mistakes that are fatal to the human race. Indeed, while nature's voice is the best advice a father can heed to fulfill his duties, for the magistrate it is a false guide, working continuously to separate him from his people, and bringing him sooner or later to his downfall or to that of the State unless he is restrained by prudence or virtue. The only precaution necessary to the father of a family is to protect himself from depravity, and to prevent his natural inclinations from becoming corrupt, whereas it is these very inclinations which corrupt the magistrate. To do what is right, the former need only consult his heart; the latter becomes a traitor the moment he heeds his. Even his own reason should be suspect to him, and he should follow only the public reason, which is the law. Besides, nature has made a multitude of good fathers of families, but I do not know whether human wisdom has ever made a good king. Look in Plato's *Statesman* at the qualities this royal man should have, and cite someone who has had them.¹⁹ Even if one were to suppose that this man had existed and had worn a crown, does reason allow the rule for human governments to be established on a marvel? It is therefore certain that the social bond of the city neither could nor should have been formed by extension of the family bond or on the same model.

2. That a rich and powerful man, having acquired immense possessions in land, might impose laws on those wishing to establish themselves there; that he might allow them to do so only on condition that they recognize his supreme authority and obey all his wishes: I can also conceive of that. But how can I conceive of a treaty that presupposes antecedent rights as the first basis of right; and in this tyrannical act isn't there a double usurpation, namely of the property of the land and of the freedom of its inhabitants? How can a private individual seize an immense territory and deprive the human race of it except through a punishable usurpation, since this act takes away from the rest of the world's inhabitants the dwelling place and foods that nature gives them in common. Let us grant to need and labor the right of the first occupant. Can't we place some limits on this right? Will setting foot on a piece of common ground be sufficient to claim on the spot to be its exclusive proprietor? Will having the force to drive away all others be sufficient to deprive them of the right to return? To what extent can the act of taking possession establish property? When Nuñez Balboa, standing on the shore, took possession of the South Sea and all of South America in the name of the crown of Castile, was this enough to dispossess all the inhabitants and exclude all the princes of the world? On that basis such ceremonies multiplied rather ineffectually, for all the Catholic King had to do was to take possession of the entire universe all at once from his study, sub-

*In a work entitled, I think, the *Dutch Observer*, I saw a rather amusing principle, which is that all land inhabited only by savages should be considered vacant, and that one may legitimately seize it and drive the inhabitants away without doing them any wrong according to natural right.²⁰

sequently eliminating from his empire what had been previously possessed by other princes.

What then are the necessary conditions to authorize the right of the first occupant to any land whatsoever? First, that it not yet be inhabited by anyone. Second, that one occupy only the amount one needs for subsistence. Third, that one take possession not by a vain ceremony but by labor and cultivation, the only sign of property that others ought to respect. The rights of a man prior to the state of society cannot go any further, and everything else, being only violence and usurpation contrary to the right of nature, cannot serve as a foundation for social right.

Now, when I have no more land than is necessary to maintain myself, and enough hands to cultivate it, if I give some away there will be less left than I need. What then can I yield to others without taking away my subsistence, or what agreement could I make with them to give them possession of what does not belong to me? As for the conditions of this agreement, it is very evident that they are illegitimate and null for those who are thereby subjected without qualification to the will of another. For besides the fact that such submission is incompatible with the nature of man, and taking away all his freedom of will is taking away all morality from his actions, it is a vain, absurd, impossible convention to stipulate absolute authority on one side, and on the other unlimited obedience. Isn't it clear that one is in no way engaged toward a person from whom one has the right to demand everything, and doesn't this condition alone, incompatible with any other, entail the nullification of the act? For how could my slave have rights against me, since all he has belongs to me, and his right being mine, my right against myself is a meaningless word?

3. That by the right of war, the victor, instead of killing his captives, reduces them to eternal servitude is doubtless profitable for him; but since he does this to them only by right of war, the state of war does not end between the conquered and himself, because it can end only by means of a free and voluntary convention just as it began. If he does not kill them all, this so-called grace is not one in fact when it must be paid for with the freedom that alone can give life a value. Because these captives are more useful to him alive than dead, he lets them live for the sake of his interest, not theirs. They owe him nothing, therefore, except obedience for as long as they are forced to obey him; but the moment the subjugated people can shake off a yoke imposed by force, and get away from its master—that is, from its enemy—if it can do so it should; and in recovering its legitimate freedom, it only makes use of the right of war which does not end so long as the violence authorized by it persists. But how could the state of war serve as the basis of a treaty of union, whose sole object is justice and peace? Can one conceive of anything more absurd than to say, "We are united in a single body since there is still war between us?" But the falseness of this so-called right to kill captives has become so well recognized that there is no longer any civilized man who

dares to exercise or claim this fantastic, barbaric right, nor even a paid sophist who dares to affirm it.

First, then, I say that since the victor does not have the right to put the vanquished to death as soon as they surrender, he cannot establish their slavery on a nonexistent right. Second, that even if the victor had this right and did not take advantage of it, this could never produce a civil state, but merely a modified state of war.

Let us add that if by the word *war* one means public war, this supposes prior societies whose origin is not explained. If one means private war between man and man, this will yield only a master and slaves, never a leader and citizens. And to create this latter relationship, it is necessary to suppose some social convention that makes a body of the people and unites the members among themselves as well as to the leader.

This, in fact, is the true character of the civil State. A people is a people independently of its leader, and if the prince dies, there are still bonds that maintain them as a national body. You will not find anything like this in the principles of tyranny. As soon as the tyrant ceases to exist, everything comes apart and falls into dust, like an oak into a pile of ashes when the fire that has devoured it dies out.²¹

4. That by the lapse of time a violent usurpation finally becomes a legitimate power, that prescription by itself can change a usurper into a supreme magistrate and a crowd of slaves into a national body is something many learned men have dared to affirm, and lacks no authority except that of reason. Far from a long period of violence being able to transform itself by the force of time into a just government, it is on the contrary undebatable that when a people is foolish enough voluntarily to give its leader arbitrary power, this power could not be transmitted to other generations; and its duration alone is enough to make it illegitimate, because one cannot presume that children yet to be born will approve their fathers' extravagance, nor with any justice make them bear the punishment for a fault they did not commit.

We will be told, I know, that as what does not exist has no status, the child yet to be born has no rights, so that his parents can renounce their rights for themselves and for him without his having ground for complaint. But to destroy such a crude sophism, it suffices to distinguish between rights that a son owes only to his father, such as the property of his goods, and rights he owes only to nature and to his status as a man, such as freedom. There is no doubt that by the law of reason a father can alienate the former, of which he is the sole owner, and deprive his children of them. But the same is not true of the latter, which are direct gifts of nature and of which, therefore, no man can deprive them. Let us suppose that a conqueror, clever and zealous for the happiness of his subjects, persuaded them that with one less arm they would be calmer and happier. Would this suffice to obligate all their children in perpetuity to have an arm cut off to fulfill their fathers' engagements?

With respect to the tacit consent invoked as a legitimization of tyranny, it is easy to see that it cannot be presumed even from the longest silence, because in addition to the fear that prevents individuals from protesting against a man who has the public force at his disposal, the people, which can manifest its will only in a body, lacks the power to assemble and declare it. On the contrary, the silence of citizens is enough to reject an unrecognized leader. They must speak, and speak in full freedom, in order to give him authority. Besides, all that is said on this subject by jurists and others who are paid to do so does not prove that the people does not have the right to take back its usurped freedom, but only that it is dangerous to try. It is also something that must never be done when one knows greater evils than having lost one's freedom.

This whole dispute about the social compact seems to me to come down to one very simple question. What can have engaged men to join together voluntarily into a social body if not their common utility? The common utility is therefore the foundation of civil society. Given this, how are legitimate States to be distinguished from forced, unauthorized groupings, if not by considering the object or end of each? If the form of the society tends toward the common good, it follows the spirit of its institution; if it envisages only the interest of the leaders, it is illegitimate by right of reason and humanity. Because even though the public interest might sometimes be consistent with tyranny, this passing consistency could not suffice to authorize a government not based on the principle of the public interest. When Grotius denies that all power is established in favor of the governed, he is only too right with respect to facts, but it is the matter of right with which we are concerned. His only proof is strange; he derives it from the power of a master over his slave, as if one fact could authorize another, and slavery itself were less wicked than tyranny. It is precisely the right of slavery that had to be proved. It is not a matter of what is, but of what is suitable and just; nor of the power one is forced to obey, but of that which one is obligated to recognize.

Chapter VI: On the Respective Rights of the Sovereign and the Citizen²²

If the common interest is the object of the association, it is clear that the general will should be the rule of the social body's actions. This is the fundamental principle I have tried to establish. Now let us see what power this will should have over private individuals, and how it becomes manifest to everyone.

As the State or City constitutes a moral person whose life consists in the cooperation and union of its members, the first and most important of its concerns is that of its own preservation. This concern requires a universal, compulsory force to move and arrange each part in the manner best suited to the whole. Thus, just as nature gives each man absolute power over his

members, the social compact gives the body politic absolute power over its members; and it is the exercise of this same power, directed by the general will, which as I have said bears the name sovereignty.

But since we have to consider, in addition to the public person, the private persons who compose it and whose life and existence are naturally independent of it, this matter requires some discussion.

Everything consists in making a clear distinction between the sovereign's rights over the citizens and those it should respect in them, and between the duties they have to fulfill as subjects and the natural right to which they are entitled as men. It is certain that each person alienates through the social compact only that part of his natural faculties, goods, and freedom whose possession matters to the society.

Thus a citizen owes the State all the services he can render it, and the sovereign, for its part, cannot burden the subjects with any chain that is useless to the community. For under the law of reason nothing is done without a cause, any more than under the law of nature. But one must not confuse what is appropriate with what is necessary, simple duty with narrow right, and what can be required of us with what we should do voluntarily.²³

The engagements that bind us to the social body are obligatory only because they are mutual, and their nature is such that one cannot work for someone else without at the same time working for oneself. Why is the general will always right, and why do all constantly want the happiness of each, if not because there is no one who does not secretly apply this word *each* to himself, and does not think of himself as he votes for all? Which proves that equality of right, and the concept of justice that flows from it, are derived from each man's preference for himself, and consequently from the nature of man; that the general will, to be truly such, should be general in its object as well as in its essence; that it should come from all to return to all, and that it loses its natural rectitude as soon as it is applied to an individual, determinate subject. Because then, judging what is not ourselves, we have no true principle of equity to guide us.

Indeed, as soon as it is a matter of fact or a particular right concerning a point that has not been regulated by a prior, general convention, the affair is in dispute. It is a lawsuit where the interested private individuals constitute one party and the public the other, but in which I see neither what law must be followed nor what judge should decide. In this case it would be ridiculous to want to turn to an express decision of the general will, which can only be the conclusion of one of the parties and which, for the other party, is consequently only a private will, subject on this occasion to injustice or error. Thus, just as a private will cannot represent the general will, the general will in turn cannot, without changing its nature, become a private will; it cannot pass judgment by name on either a man or a fact. When the people of Athens, for example, appointed or dismissed its leaders, awarded a recompense to one or imposed a fine on another, and by means of a multitude

of particular decrees performed indistinguishably all the acts of government, the people then no longer had a general will properly speaking. It no longer acted as sovereign, but as magistrate.

It should be understood from this that what generalizes the public will is not the number of voters, but the common interest that unites them, because in this institution everyone necessarily subjects himself to the conditions he imposes on others, an admirable agreement between interest and justice which confers on common deliberations a quality of equity that vanishes in the discussion of private matters, for want of a common interest that unites and identifies the will of the judge with that of the party.

However one traces the principle, one always reaches the same conclusion, namely that the social compact establishes an equality of right between citizens such that they all engage themselves under the same conditions and should all benefit from the same advantages. Thus, by the very nature of the compact, every act of sovereignty, which is to say every authentic act of the general will, obligates or favors all citizens equally, so that the sovereign knows only the nation as a body and makes no distinctions between any of those who compose it. What really is an act of sovereignty then? It is not an order given by a superior to an inferior, nor a command given by a master to a slave, but a convention between the body of the State and each of its members. A convention that is legitimate, because it has the social contract as a basis; equitable, because it is voluntary and general; useful, because it can have no other object than the good of all; and solid, because it has the public force and the supreme power as guarantees. As long as subjects are subordinated only to such conventions, they do not obey anyone, but solely their own will; and to ask how far the respective rights of the sovereign and of private individuals extend is to ask how far the latter can engage themselves to one another, each to all and all to each.

It follows from this that the sovereign power, albeit entirely absolute, entirely sacred, and entirely inviolable, does not and cannot exceed the limits of the general conventions, and that every man can fully dispose of the part of his goods and freedom that has been left to him by these conventions. So that the sovereign never has the right to burden one private individual more than another, because then the matter becomes individual, and its power is no longer competent.

Once these distinctions are acknowledged, it is so false that the social contract involves any true renunciation on the part of private individuals that their situation, by the effect of this contract, is actually preferable to what it was beforehand; and instead of a simple alienation, they have only exchanged to their advantage an uncertain, precarious mode of existence for another that is better and safer; natural independence for civil freedom, the power to harm others for their personal safety, and their force, which others could overcome, for a right that the social union renders invincible. Their life itself, which they have dedicated to the State, is constantly protected by it; and when they risk or lose it for the State's defense, what are they then doing

that they did not do more often and with greater danger in the state of nature when, waging inevitable fights, they defend at the risk of life that which preserves it for them? It is true that everyone has to fight, if need be, for the homeland, but also no one ever has to fight for himself. Don't we still gain by risking, for something that gives us security, a part of what we would have to risk for ourselves as soon as our security is taken away?

Chapter VII: Necessity for Positive Laws²⁴

It seems to me that these are the most accurate ideas one can have about the fundamental compact that is the basis of every true body politic; ideas that it was all the more important to develop because, for want of having conceived them clearly, all those who have dealt with this subject have always founded civil government on arbitrary principles which do not flow from the nature of this compact. In what follows, it will be seen how easily the whole political system is deduced from the principles I have just established, and how natural and enlightened its consequences are. But let us finish laying down the foundations of our construction.

Since the social union has a determinate object, its fulfillment must be sought as soon as the union is formed. In order for each person to want to do what he ought to do according to the engagement of the social contract, each must know what it is that he ought to want. What he ought to want is the common good; what he ought to avoid is the public ill. But since the State has only an ideal and conventional existence, its members have no natural, common sensitivity by means of which they are promptly alerted to receive a pleasant impression from what is useful to it and a painful impression as soon as it is harmed. Far from anticipating the ills that attack it, they are rarely in time to effect a remedy when they begin to feel them. Yet these ills must be foreseen long in advance to be avoided or cured. How then could private individuals safeguard the community from ills they can neither see nor feel until they have struck? Besides, how is it possible to be assured that men who are constantly reminded of their primitive condition by nature will never neglect this other, artificial condition whose advantage they can only sense through consequences that are often far removed? Let us assume that they are always subject to the general will. How can this will manifest itself on all occasions? Will it always be evident? Will the illusions of private interest never obscure it? Will the people always remain assembled to declare it, or will they rely for this on private individuals who are ever ready to substitute their own interest? Finally, how will they all act together, how will they organize their affairs, what means of agreement will they have, and how will they divide the common tasks among themselves?

These difficulties, which must have appeared insurmountable, were removed by the most sublime of all human institutions, or rather by a celestial inspiration that taught people to imitate here on earth the immutable decrees of the divinity. By what inconceivable art could the means have been

found to subjugate men in order to make them free; to use the goods, the labor, even the life of its members in the service of the State, without forcing and without consulting them; to bind their will by their own consent; to make their agreement predominate over their refusal; and to force them to punish themselves when they do what they did not want? How can it be that all obey while none commands, that they serve and have no master, and are all the freer, in fact, because under what appears as subjugation, no one loses any of his freedom except what would harm the freedom of another. These marvels are the work of the law. It is to law alone that men owe justice and freedom. It is this healthy instrument of the will of all that reestablishes, as a right, the natural equality among men. It is this celestial voice that tells each citizen the precepts of public reason, and teaches him to behave according to the maxims of his own judgment and not to be constantly in contradiction with himself. Laws are the sole motivation of the body politic, which is active and sensitive only through them. Without laws, the newly formed State is only a body without a soul; it exists but cannot act. For it is not enough for everyone to be subject to the general will; to follow it, one must know it. From this arises the necessity for legislation.

Laws are properly speaking only the conditions of the civil association. The people that is subject to the laws ought therefore to be their author, because only those who are forming an association have the right to declare the conditions under which they are willing to be associated. But how will they declare these conditions? Will it be in common accord and by sudden inspiration? Does the body politic have an organ to enunciate its will? Who will give it the necessary foresight to formulate acts and publish them in advance, or how will it pronounce them in time of need? How is it to be expected that a blind multitude, which often does not know what it wants because it rarely knows what is good for it, can formulate and carry out by itself such a difficult undertaking as a system of legislation, which is the most sublime effort of human wisdom and foresight? By itself, the people always wants the good, but by itself it does not always see it. The general will is always right; it is never a question of correcting it. But it is necessary to know how to consult it appropriately. It must be presented with objects as they are, or sometimes as they should appear to be; shown the good path it wants to follow; safeguarded against the seduction of private wills; shown how to assimilate considerations of time and place; taught to weigh the illusion of present, tangible advantages against the danger of remote, hidden ills. Private individuals see the good they reject; the public wants the good it does not see. All are equally in need of guides. The former must be obligated to make their wills conform to their reason; the latter must be taught to know what it wants. Then public enlightenment will result in the virtue of private individuals; and this union of understanding and will in the social body, from the complete cooperation of the parts and the greatest force of the whole. From this arises the necessity for a legislator.

BOOK II

ESTABLISHMENT OF THE LAWS

Chapter I: End of Legislation²⁵

Through the social compact, we have given the body politic existence and life; the issue now is to give it movement and will through legislation. For the original act which forms and unites this body does not thereby determine anything about what it should do to preserve itself. This is the noble objective to which the science of legislation is devoted. But what is this science? Where should one look for a genius who knows it, and what virtues are necessary for the individual who dares to practice it? This research is imposing and difficult; it is even discouraging for anyone who hopes to see the emergence of a well-instituted State.

Chapter II: On the Legislator²⁶

Indeed, the discovery of the best rules of society that are suited to nations would require a superior intelligence, who knew all of men's needs but felt none of them; who had no relationship to our nature, yet saw all the relationships suited to it; whose happiness was independent of us, yet who was nevertheless willing to attend to ours. In short, a God would be needed to give the human race good laws; and just as herdsman are of a species superior to the livestock they tend, so the shepherds of men, who are their leaders, ought to be of a more excellent species than the people.

This reasoning, used by Plato with respect to right in defining the civil or royal man he seeks in the *Statesman*, Caligula used in fact, according to Philo, to prove that the masters of the world were of a nature superior to the rest of mankind. But if it is true that a great prince is a rare man, what about a great legislator? For the former only has to follow the model that the latter should propose. The latter is the mechanic who invents the machine; the former is only the workman who puts it together or starts it running. At the birth of societies says Montesquieu, the leaders of republics create the institutions; thereafter it is the institutions that form the leaders of republics.

One who thinks he is capable of forming a people should feel that he can, so to speak, change human nature. He must transform each individual, who by himself is a perfect and solitary whole, into a part of a larger whole

from which this individual receives, in a sense, his life and his being. He must in a sense mutilate man's constitution in order to strengthen it; substitute a partial and moral existence for the physical and independent existence we have all received from nature. He must, in short, take away all man's own, innate forces in order to give him forces that are foreign to him and that he cannot make use of without the help of others. Now the more these natural forces are dead and destroyed, and the acquired ones great and lasting, the more the institution as well is solid and perfect. So that if each citizen can do nothing except with all the others, and if the force acquired by the whole is equal or superior to the sum of the natural forces of all the individuals, it may be said that legislation has reached its highest possible point of perfection.

The legislator is an extraordinary man in the State in all ways. If he should be so by his talents, he is no less so by his function. It is not magistracy; it is not sovereignty. This function, which constitutes the republic, does not enter into its constitution. In a way, it is a particular and almost divine activity that has nothing in common with human dominion. For if one who has authority over men should not have authority over laws, one who has authority over laws should also not have authority over men. Otherwise his laws, being made to serve his passions, would often only perpetuate his injustices, and he could never avoid having private views alter the sanctity of his work. Thus the variations of written law prove the private motives that dictated the decisions: an immense, formless, contradictory compilation; the work of an imbecilic emperor, a fallen woman, and a corrupt magistrate who published a law to authorize each violent act he wanted to commit.²⁷

When Lycurgus wanted to give his homeland laws, he began by abdicating sovereignty. It was the custom of most Greek cities to entrust the drafting of their laws to foreigners. During its finest period, Rome revived in its midst all the crimes of tyranny, and nearly perished as a result of combining legislative authority and sovereign power in the same hands.

Not that it was ever imagined that the will of one man could become law without the consent of the people. But how can this consent be refused to someone who is known to be the master and in whom are combined the public confidence and force. Reasonable people have difficulty making themselves heard; weak people dare not speak; and the forced silence of subjects has so often passed for tacit approval that since the Roman Emperors, who under the name tribunes arrogated to themselves all the rights of the people, men have dared to place the will of the prince above the law, even though the law is the only source of his authority.²⁸ But we are dealing with rights and not abuses.

He who drafts the laws, therefore, does not or should not have any legislative power. And the people itself cannot divest themselves of this supreme right, because according to the fundamental compact only the general will

obligates private individuals, and one can never be assured that a private will is in conformity with the general will without submitting it to the free vote of the people.

If it is said that once an entire people has subjected itself voluntarily, solemnly, and without constraint to one man, all the objects of this man's will should, by virtue of this subjection, be considered as so many acts of the general will, one states a sophism which I have already refuted. I shall add that the voluntary and supposed subjection of the people is always conditional; that it is not given for the prince's benefit but for its own; that if each private individual promises to obey without reservation, it is for the good of all; that in this situation the prince also makes engagements on which those of the people depend, and that even under the most absolute despotism, he cannot break his oath without at the same moment relieving his subjects from theirs.

Even if a people were stupid enough to stipulate nothing in exchange for its obedience except the right to command it, this right would still be conditional in nature. To clarify this truth, it must be carefully noted that those who claim that a gratuitous promise rigorously obligates the one who makes it, nonetheless distinguish with care between promises that are purely gratuitous and those that contain some tacit, but obvious, conditions. In the latter case, they all agree that the validity of promises depends on the execution of the implied condition; for example, when a man engages himself in the service of another, he obviously assumes that this other man will give him food. Similarly, a people that chooses one or several leaders for itself and promises to obey them, obviously assumes that its freedom, which is thereby alienated, will only be used to the people's own advantage; for without this the people would be insane and its engagements null. With regard to the same alienation extorted by force, I have already shown that it is null, and that one is obligated to obey force only as long as one is constrained to do so.

It is, therefore, always necessary to know whether the conditions are fulfilled and consequently whether the will of the prince is really the general will, a question of which the people is the sole judge. Thus the laws are like pure gold, which cannot be denatured by any possible operation and which the first test promptly returns to its natural form. Moreover, it is contrary to the nature of will, which has no dominion over itself, to engage itself for the future. One can obligate oneself to do, but not to will; and there is a great difference between executing what one has promised, because one has promised it, and continuing to will it, even when one has not previously promised to do so. Today's law should not be an act of yesterday's general will, but of today's, and we have engaged ourselves to do not what everyone has willed, but what everyone now wills, on the understanding that the sovereign, whose resolutions as sovereign concern only itself, is always free to change them. It follows from this that when the law speaks in the name of the people, it is in the name of the people at present and not that of former

times. Even existing laws only have lasting authority insofar as the people, being free to revoke them, nonetheless does not do so, which proves current consent. Nor can it be doubted that in the assumed case, the public will of the legitimate prince obligates private individuals for as long as the nation, being able to assemble and oppose it without any obstacle, gives no sign of disavowal.

These clarifications show that since the general will is the continuing bond of the body politic, the legislator is never allowed, whatever his previous authorization might be, to act otherwise than by directing this same will by persuasion, nor to prescribe anything to private individuals that has not first received the sanction of general consent, for fear of destroying from the outset the very essence of the thing one wants to form, and of breaking the social tie in trying to strengthen the society.

Therefore, I see two things together in the work of legislation that seem mutually exclusive: an undertaking beyond all human force and, to execute it, an authority that amounts to nothing.

Another difficulty deserves attention. Wise men often made the mistake of using their own language rather than that of the common people; thus the people never understood them. There are a thousand kinds of ideas that have only one language and are impossible to translate for the people. Overly general views and overly remote objects are equally beyond its grasp. For example, each individual, seeing no other aspect of government than his private happiness, has difficulty perceiving the advantages he should obtain from the continual deprivations imposed by good laws. In order for an emerging people to feel the noble maxims of justice and the fundamental rules of statecraft, the effect would have to become the cause; the social spirit, which should be the result of the institution, would have to preside over the founding of the institution itself, and men would have to be prior to laws what they should become by means of laws. Since the legislator is unable to use either force or reasoning, he must necessarily have recourse to another order of authority, which can win over without violence and persuade without convincing.

This is what has always forced the fathers of nations to have recourse to celestial intervention and to attribute their own wisdom to the Gods; so that the peoples, subjected to the laws of the State as to those of nature, and recognizing the same power in the formation of the physical body as in that of the moral body, might obey with freedom and bear with docility the yoke of public felicity. It is this sublime reason, which rises above the grasp of common men, whose decisions the legislator places in the mouths of the immortals, in order to subjugate by means of divine authority those who cannot be moved by human prudence. But it is not every man who can make the Gods speak or be believed when he declares himself their interpreter. The grandeur of the things said in their name has to be sustained by superhuman

eloquence and vigor. The fire of enthusiasm should be combined with profundity of wisdom and constancy of virtue. In short, the legislator's great soul is the true miracle that should prove his mission. Any man can engrave stone tablets, buy an oracle, pretend to have a secret relationship with some divinity, train a bird to talk in his ear, or find some other crude way to impress the people. One who knows only that much might even assemble, by chance, a crowd of madmen, but he will never found an empire, and his extravagant work will soon die along with him. For if false tricks can form a fleeting bond, wisdom alone can make it durable. The Jewish law, which is still in existence, and the law of the son of Ishmael, which has ruled half the world for eleven centuries, still bear witness today to the great men who formulated them; and whereas proud philosophy or blind partisan spirit regards them merely as lucky imposters, the true political theorist admires in their institutions that great and powerful genius which presides over lasting establishments.

One must not conclude from all this, as Warburton does, that politics and religion can have a common object, but rather that one sometimes serves as an instrument of the other. [Everyone is quite aware of the usefulness of political union for making certain opinions permanent and maintaining them as a body of doctrine and as a sect. And as for the contribution of religion to the civil establishment, one also sees that it is no less useful to be able to give the moral tie an internal force that reaches into the soul and is always independent of goods, of misfortunes, of life itself, and of all human events.

I don't believe that this chapter contradicts what I said before concerning the limited usefulness of the oath in the contract of society, for there is a great difference between remaining faithful to a State solely because one has sworn to do so, or because one considers its institution to be divine and indestructible.]

Chapter III: On the People To Be Founded²⁹

Although I am dealing here with right and not with expediency, I cannot refrain from taking a passing glance at those matters of expediency which are indispensable to every good institution.

Just as a skillful architect, before putting up a building, observes and tests the ground to see whether it can bear the weight, so the wise founder does not start by drafting laws at random, but first examines whether the people for whom he intends them is suited to bear them. For this reason, Plato refused to give laws to the Arcadians and Cyrenians, knowing that both were rich and could not tolerate equality. For this reason there were good laws and wicked men in Crete, because Minos had disciplined only a people full of vices. A thousand nations that have long flourished on earth could never have tolerated good laws, and even those that could were only so dis-

posed for a very short time during their entire existence. Peoples, like men, are easy to handle only in their youth. They become incorrigible as they grow older. Once customs are established and prejudices have taken root, it is a dangerous and foolhardy undertaking to want to touch them. People cannot even tolerate talk of making them happy, like those stupid and cowardly patients who tremble at the sight of a doctor. There are few nations debased by tyranny that care at all about freedom, and those that would still want it are no longer in condition to endure it.

To be sure, just as men's minds are unhinged and their memories of the past erased by certain illnesses, so there sometimes occur, during the lifetime of States, violent periods when revolutions have the same effect on peoples as do certain crises on individuals; when horror of the past is equivalent to amnesia, and when the State, set afire by civil wars, is reborn so to speak from its ashes and resumes the vigor of youth by escaping from death's clutches. Sparta in the time of Lycurgus and Rome after the Tarquins were like this; and among us so were Switzerland and Holland after the expulsion of the tyrants.

But these events are rare; they are exceptions that can always be explained by the particular constitution of the exceptional State. In general, peoples that are worn out by a long enslavement and the resulting vices lose both the love of country and the sentiment of happiness. They console themselves for their misfortune by imagining it is impossible to be better off. They live together without any real union, like men grouped on the same piece of land but separated by deep ravines. Their misery is not in the least obvious to them because ambition blinds them and no one looks at the position he is in, but rather at the one to which he aspires.

A people in this state is no longer fit for a healthy institution, because its will is no less corrupt than its constitution. It has nothing more to lose; it cannot gain anything more. Dazed by enslavement, it scorns the good things it does not know. Disturbances can destroy it, but revolutions cannot reestablish it, and as soon as its chains are broken, it falls apart and no longer exists. Thus, henceforth it must have a master, and never a liberator.

A people that is not yet corrupt can have vices in its size that are not in its substance. Let me explain.

Just as nature has set limits to the stature of a well formed man, outside of which there are only giants or dwarfs, so with regard to the best constitution of a State there are limits to the dimensions it should have, in order that it be neither too large to be well governed, nor too small to be self-sustaining. It is hard to imagine anything more foolish than the maxims of those conquering nations that believed they always increased their power by extending their territory beyond all measure. It is beginning to be obvious that every body politic has a maximum force which it cannot exceed, and of which it often falls short by growing larger. But perhaps it is not yet suffi-

ciently obvious that the more the social bond stretches, the looser it becomes, and that in general a small State is always proportionately stronger than a large one.

Only a glance at history is needed to be convinced of this maxim by experience, and a thousand reasons can prove it. First, administration becomes more difficult over long distances, as a weight becomes heavier at the end of a large lever. It also becomes more burdensome as the number of levels multiplies, because each city has its own administration paid for by the people; each district has one, again paid for by the people; next, each province; then, the large-scale governments—the satrapies and viceroyalties—that cost more the higher up one goes. Finally, there is the supreme administration which crushes everything. There barely remain resources for emergencies, and when it is necessary to have recourse to them, the State is always on the brink of ruin. The government has less vigor and speed to enforce the laws, forestall harassment, correct abuses, and repress seditious undertakings that may occur in distant places. The people has less affection for leaders it never sees, for the homeland which is like the whole world in its eyes, and for its fellow citizens most of whom are foreigners to it. The same laws cannot be suited to such a variety of nations, which have different mores, live in contrasting climates, and cannot tolerate the same form of government. Different laws only produce discord and confusion among peoples who, living under the same leaders and in constant communication, continually move to each other's areas and, being subjected to other customs, are never sure whether their patrimony is really theirs. Talents are buried, virtues unknown, vice unpunished in this multitude of men who do not know one another and who are gathered together in one place by the location of the administration. Leaders overburdened with work see nothing by themselves. Finally, all the public attention is absorbed by the steps that must be taken to maintain everywhere the general authority, which so many distant officials always want to avoid or abuse. Nothing is left for the people's happiness, and there is barely anything left for its defense if necessary. And thus a State that is too big for its constitution always perishes, crushed by its own weight.

On the other hand, the State ought to procure a sufficient basis to be solid and withstand the upheavals it is sure to go through and the efforts it will be forced to sustain, for all peoples have a kind of centrifugal force by which they constantly act upon each other and tend to grow at the expense of their neighbors. Thus the weak risk being rapidly swallowed up, and one cannot hope to preserve oneself except by establishing a sort of equilibrium with all the others which approximately equalizes the pressure.

It is apparent from this that there are reasons to expand and reasons to shrink; and it is not the least of the political theorist's talents to find among these reasons the proportion most advantageous to the preservation of the

State. In general it can be said that the former, being purely external and relative, should always be subordinated to the latter, which are interior and absolute. For a strong, healthy constitution is the first thing that must be sought, and one should rely more on the vigor born of a good government than on the resources furnished by a large territory.

Besides, there have been States so constituted that the necessity for conquests was in their constitution itself, and that were forced to grow endlessly to maintain themselves. Perhaps they took great pride in this happy necessity, though it showed them, along with the limit of their size, the inevitable moment of their downfall.

In order for the State to be well governed, its size—or, to be more precise, its extent—would have to be measured by the faculties of those who govern it; and given the impossibility that great geniuses will succeed one another endlessly in the government, calculations should be based on average competence.³⁰ This explains why nations that have grown under illustrious leaders necessarily decline in the hands of the imbeciles who never fail to succeed them, and why if the State is the least bit large, the prince is almost always too small. When, on the contrary, it happens that the State is too small for its leader, which is very rare, it is still badly governed, because the leader, always pursuing his grand views and ambitious plans, forgets the people's interests and by misusing his excessive talents, makes it no less unhappy than does a stupid leader who is limited by his lack of talents. The drawback of the administration of a monarchy, even one that is well regulated, is most strongly felt when it is hereditary and the leader is not chosen by the people but determined by birth. The kingdom would, so to speak, have to expand or shrink with each reign depending on the competence of the prince. In contrast, since the talents of a senate are more stable, the State can have invariable boundaries without causing the administration to suffer thereby.

Moreover, a fundamental rule for every well-constituted and legitimately governed society would be that all the members could be easily assembled every time this would be necessary, for it will be seen later that assemblies by deputation can neither represent the body nor receive from it sufficient powers to make laws in its name as sovereign.³¹ From this it follows that the State ought to be limited to one town at the most; and that if there are several, the capital will always be sovereign in fact and the others subjects—a kind of constitution in which tyranny and abuse are inevitable.

It must be noted that a body politic can be measured in two ways, namely by the extent of its territory or by the number of its people. There is a necessary ratio between these two numbers if the State is to be given its true size. For it is the men who make up the State and the land that feeds the men. This ratio consists in there being enough land for the maintenance of its inhabitants and as many inhabitants as can be fed by the land. The maximum force of a given number of people is to be found in this proportion,

for if there is too much land, its defense is burdensome, its cultivation inadequate, and its output superfluous; if there is not enough land, the State finds itself dependent on its neighbors for the supplement.

The implications of this important topic would take us too far afield if we were to stop here to consider them. For example, it is certain that one could not calculate arithmetically a fixed ratio between the amount of land and the number of men that are mutually sufficient, as much because of differences in qualities of the terrain, its degrees of fertility, the nature of its products, and the influence of climate, as because of differences noted in the temperaments of the men who inhabit them, some of whom consume little in a fertile country, others a great deal on more sterile soil. Moreover, attention must be paid to the greater or lesser fecundity of women, to whatever the country offers that is more or less favorable to population, to the numbers that the legislator can hope to attract there by means of what he establishes. Hence, the legislator's judgment should not always be based on what he sees, but on what he foresees; nor should he give as much consideration to the present state of the population as to the state it should naturally attain. Finally, there are a thousand occasions when the peculiarities of a place require or permit the inclusion of more or less land than appears necessary. Thus one expands considerably in mountainous country where natural products, namely woods and pastures, require less human labor; where experience shows that women are more fecund than on the plains; and where a large amount of sloping land provides only a small horizontal area, which is all that can be counted on for vegetation. On the contrary, it is possible to shrink by the sea, even on nearly barren rocks and sand, because fishing can substitute substantially for products of the land; because men should be gathered more closely together to repulse privateers and pirates; and because it is, in addition, easier to rid the country of surplus inhabitants by means of commerce and colonies.

To these conditions must be added one that cannot substitute for any other, but without which all the rest are useless: the enjoyment of prosperity and profound peace. For the time when a State is organized, like that when a battalion is formed, is the instant when the body is weakest, least capable of resisting, and easiest to destroy. There would be better resistance during absolute disorder than during a moment of ferment, when everyone is concerned about his status rather than the danger. Should a war, famine, or sedition occur in this time of crisis, the State is inevitably overthrown. To be sure, many governments are established during such storms, but then it is these very governments that destroy the State. Usurpers always bring about or choose these times of trouble, taking advantage of public panic to pass destructive laws that the people would never adopt when calm. It can be said that the moment of the founding is one of the surest ways to distinguish the work of a legislator from that of a tyrant.

At the risk of repetition, let us recapitulate what the legislator should

consider before undertaking the founding of a people, for these considerations are important if time and authority are not to be used in vain.³² First, he should not try to change the institution of a people that is already subject to laws, let alone try to restore an institution that has been abolished or to revive worn out mechanisms. For the force of laws is like the flavor of salt. Thus it is possible to create vigor in a people who never had any, but not to restore it in a people who has lost it. I consider this maxim fundamental. Agis tried to revive the discipline of Lycurgus in Sparta; the Maccabees wanted to restore Moses' theocracy in Jerusalem; Brutus wanted to restore Rome's ancient freedom; Rienzi tried to do the same thing later. All were heroes, even the last one for a brief time in his life. All died in the course of their undertaking.

Every large nation is incapable of discipline. A State that is too small lacks stability. But average size sometimes does no more than to combine these two defects.

It is necessary, furthermore, to take the surrounding area into consideration. What enabled the small Greek States to survive was the fact that they were themselves surrounded by other small States, and that all together they were as good as a very big one when they united through common interest. It is an unfortunate position to be between two powerful neighbors who are jealous of each other. It is hard to avoid getting involved in their quarrels and being crushed along with the weaker of the two. Any State that is an enclave within another should be counted as nothing. Any State too big for its inhabitants or overpopulated for its territory is hardly worth more, unless this imbalance is accidental and there is a natural force that returns things to their correct proportion.

Finally, the circumstances must be taken into consideration, for example because one should not talk about rules to starving people, nor about reason to fanatics; and war, which silences existing laws, can hardly allow for their establishment. But famine, frenzy, and war do not last forever. There is scarcely any man or people who will not listen to reason at some better period and some moment of his life. That is the instant that must be seized.

What people, then, is suited for legislation? One that has never yet borne the yoke of laws, that has neither customs nor superstitions that are entrenched, yet is already bound by some union of origin or interest. One that does not risk being crushed by a sudden invasion and can, without becoming involved in its neighbors' quarrels, resist each alone or use the help of one to drive away another. One whose members can all be known to each other, and where it is not necessary to impose on any man a greater burden than a man can bear. One that does not depend on other peoples and on whom no other people depends.* One that is neither rich nor poor and is self-

*If one of two neighboring peoples could not do without the other, the situation would be very hard for the former, but very dangerous for the latter. In such a case, any wise nation will very quickly try to relieve the other of its dependency.

sufficient. In short, one that combines the stability of an ancient people with the docility of a young people. What makes the work of legislation difficult is not so much what must be established as what must be destroyed. And what makes success so rare is the impossibility of finding the simplicity of nature together with the needs of society. All these conditions are hard to find together, I admit; hence one sees few well-constituted States.

Chapter IV: On the Nature of Laws and the Principle of Civil Justice³³

Whatever is good and in accordance with order is so by the nature of things, independently of all human convention.

All justice comes from God; He alone is its source. But if we knew how to receive it from on high, we would need neither government nor laws. There is without doubt a universal justice for man emanating from reason alone and founded on the simple right of humanity; but to be acknowledged, this justice must be reciprocal. Considering things from a human point of view, the laws of justice are ineffectual between men for want of a natural sanction; they only profit wicked people and burden the just man should the latter observe them toward all men while no one observes them toward him. Therefore, there must be conventions and laws to combine rights with duties and to bring justice back to its object. In the state of nature where everything is common, I owe nothing to those to whom I have promised nothing; I recognize nothing as belonging to someone else except what is useless to me.

But it is important to explain here what I mean by the word law. Because as long as one is satisfied to attach vague, metaphysical ideas to this word, one could know what a law of nature is, yet continue to be ignorant of what a law is in the State.

We have said that the law is a public, solemn act of the general will, and since everyone has subjected himself to this will through the fundamental compact, it is from this compact alone that all law derives its force. But let us try to give a more precise idea of this word *law* taken in the proper, restricted sense relevant to this work.

The substance and form of laws constitute their nature. The form consists of the authority that enacts laws; the substance consists of the thing enacted. The latter, which is the only part considered in this chapter, seems to have been badly understood by those who have discussed laws.

As the thing enacted is necessarily related to the common good, it follows that the object of the law should be general, as is the will dictating it; and it is this double universality which creates the true character of the law. Indeed, when a particular object has different relationships to different individuals, each one having its own will concerning this object, there is no general will that is perfectly unified concerning this individual object.

What do these words *Universality* and *Generality*—which are the same here—signify? The genus considered as an abstraction, or what is suited to

the whole in question; and the whole is such only with respect to its parts. That is why the general will of a whole people is not general for an individual foreigner, because that private individual is not a member of this people. Now the moment a people considers a particular object, even if it is one of its own members, a relation between the whole and its part is formed which makes of them two separate entities, one of which is the part and the other of which is the whole minus that part. But the whole minus a part is not the whole, and for as long as this relationship lasts, there is no whole, but rather two unequal parts.

On the contrary, when the entire people enacts something concerning the entire people, it considers only itself, and if a relationship is formed then, it is between the whole object viewed in one way and the whole object viewed in another, without any division of the whole. Then the object of the enactment is general like the will that enacts, and it is this act that I call a law.

When I say that the object of the laws is always general, I mean that the law considers the subjects as a body and actions by their genera or species, never one man in particular or one unique individual action. Thus the law can very well enact that there will be privileges, but it cannot confer them on anyone by name. It can create several classes of citizens, and even designate the qualities determining who has a right to each of these classes, but it cannot specify the particular people to be admitted to them. It can establish a royal government and hereditary succession, but it cannot elect a king or name a royal family. In short, any function that relates to an individual object does not belong to the legislative power [and that is one of the reasons why the law cannot be retroactive, because it would be an enactment concerning a particular fact rather than enacting generally on a species of actions that have not yet been done by anybody and that, therefore, have nothing individual about them until after the publication of the law and by the will of those who perform them].

Given this idea, one easily sees that it is no longer necessary to ask who should make laws, since they are acts of the general will, nor whether the prince is above the laws, since he is a member of the State; nor whether the law can be unjust, since no one is unjust toward himself; nor how one is free yet subject to the laws, since they merely record our wills.

Furthermore, one sees that since the law combines the universality of the will and the object, what any man, whoever he may be, orders on his own authority is not a law. Whatever is ordered even by the sovereign concerning a particular object is not a law either, but rather a decree, nor is it an act of sovereignty but of magistracy, as I shall explain later.

The greatest advantage of this concept is that it shows us clearly the true foundations of justice and natural right.³⁴ Indeed, the first law, the only truly fundamental law that flows directly from the social compact, is that each man prefer the greatest good of all in all things.

Now the specification of the actions that contribute to this greatest good, by means of a number of particular laws, is what constitutes right in the narrow, positive sense. Everything that is seen to contribute to this greatest good, but that laws do not specify, constitutes acts of civility,* of goodwill; and the habit that disposes us to practice these acts even to our own disadvantage is what is called force or virtue.

Extend this maxim to the general society of which the State gives us an idea. Protected by the society of which we are members or by the one in which we live, the natural repugnance to do evil is no longer counter-balanced in us by the fear of being wronged, and we are simultaneously moved by nature, by habit, and by reason to treat other men approximately as we do our fellow citizens. From this disposition, transformed into actions, arise the rules of rational natural right, different from natural right properly so called, for the latter is based only on a true but very vague sentiment that is often stifled by love of ourselves.

This is how the first concepts of the just and unjust are formed in us, for law comes before justice and not justice before law; and if law cannot be unjust, it is not because justice is its basis, which might not always be true, but because it is contrary to nature for one to want to harm himself, which is true without exception.

It is a beautiful and sublime precept to do unto others as we would have done unto ourselves, but isn't it evident that far from providing a basis for justice, this precept is itself in need of a basis? For where is the clear, solid reason for me, just as I am, to behave according to the will I would have if I were someone else? Furthermore, it is clear that this precept is subject to a thousand exceptions for which only sophistic explanations have been given. Wouldn't a judge who condemns a criminal want to be absolved if he were a criminal himself? Where is the man who would not want never to be refused anything? Does it follow that we must grant everything that is asked of us? What is the basis of that other axiom, *cuique suum*, which serves as the basis of all right of property, if not the right of property itself?³⁶ And if I do not say, along with Hobbes, everything is mine, why wouldn't I at least recognize as mine in the state of nature all that is useful to me and that I can get hold of?

The true principles of the just and unjust must, therefore, be sought in the fundamental and universal law of the greatest good of all, and not in the private relations between one man and another; and there is no particular rule of justice that cannot be easily deduced from that first law. Hence *cuique suum*, because private property and civil freedom are the bases of the community. Hence *love thy neighbor as thyself*, because the private self extended to the whole is the strongest bond of the general society, and because the State has the highest degree of force and life it can have when all

*I do not need to caution, I think, that this word must not be understood in the French manner.³⁵

our private passions are combined in it. In short, there are a thousand cases when it is an act of justice to harm one's neighbor, whereas every just action necessarily has as its rule the greatest common utility; this is without exception.

Chapter V: Classification of Laws³⁷

Various relations have to be considered in order to organize the whole or give the commonwealth the best possible form. First, the action of the entire body acting upon itself—that is, the relationship of the whole to the whole, or of the sovereign to the State; and this relationship is composed of the relationship of intermediary forces, as we shall see later. The laws that regulate this relationship are named political laws and are also called fundamental laws, not without a degree of reason if these laws are wise. For if there is only one correct way to organize each State, the people that has found it should never change anything in it, but if the established order is bad, why should one accept, as fundamental, laws that prevent it from being good? Besides, in any event the people always has the power to change its laws, even the best; for if it pleases a man to harm himself, who has the right to prevent him from doing so?

The second relation is that of the members to each other or to the entire body. And this relationship should be as small as possible with respect to the former and as large as possible with respect to the latter, so that each citizen is in a position of perfect independence from all the others and of excessive dependence upon the City. This is always achieved by the same means, because only the force of the State creates the freedom of its members. It is from this second relationship that civil laws arise.

The laws that regulate the exercise and form of sovereign authority with respect to private individuals were called laws of majesty in Rome, such as the one that forbade appealing popular judgments to the senate and the one that made the person of the tribunes sacred and inviolable.

As for the particular laws regulating the respective duties and rights of the citizens, they are called civil laws with respect to domestic relations and the property of goods, and police with regard to good public order and the safety of people and things.

It is possible to consider a third type of relation between man and the law, namely that of disobedience and penalty. And this gives rise to the establishment of criminal laws, which are basically not so much a particular type of law as a sanction for all the others.

To these three types of laws is added a fourth, the most important of all; which is not engraved on marble or bronze, but in the hearts of the citizens; which is the true constitution of the State; which gains fresh force each day; which, when other laws age or die out, revives or replaces them, preserves a people in the spirit of its institution, and imperceptibly substitutes the force of habit for that of authority. I am speaking of mores and customs—a part of

the laws unknown to our political theorists, but on which the success of all the others depends; a part to which the great legislator attends in secret, while appearing to limit himself to the particular regulations that are merely the sides of the arch of which mores, slower to arise, form at last the unshakable keystone.

Among these various types of laws, I limit myself in this work to the discussion of political laws.

Chapter VI: On Various Systems of Legislation³⁸

If one seeks to define precisely what constitutes that greatest good of all which ought to be the basis of every system of legislation, one will find that it comes down to these two principal objects: *freedom* and *equality*. Freedom, because all private dependence is that much force subtracted from the body of the State; equality, because freedom cannot last without it.

I have already said what civil freedom is. With regard to equality, this word must not be understood to mean that degrees of power and wealth should be exactly the same, but rather with regard to power, it should be incapable of all violence and never exerted except by virtue of status and the laws; and with regard to wealth, no citizen should be so opulent that he can buy another, and none so poor that he is constrained to sell himself. This presumes moderation in goods and influence on the part of the upper classes and moderation in avarice and covetousness on the part of the lower classes.

This equality is said to be a speculative fantasy that cannot exist in practice. What? Because an effect is inevitable, does it follow that it must not at least be regulated? It is because the force of things always tends to destroy equality that the force of legislation should always tend to maintain it.

But these general objects of all good institutions should be modified in each country according to the relationships that arise as much from the local situation as from the character of the inhabitants; and it is on the basis of these relationships that each people must be assigned a particular system of legislation that is the best, not perhaps in itself, but for the State for which it is intended. For example, is the soil unprofitable and barren, or the country too small for its inhabitants? Turn to industry and the arts, the products of which can be exchanged for the foodstuffs you lack. On the contrary, do you inhabit rich plains and fertile hillsides? Do you lack inhabitants on good terrain? Apply all your efforts to agriculture, and chase out the arts for fear that they may complete the country's depopulation by concentrating its small number of inhabitants in a few locations—for it is known that, all things being equal, the population expands less in towns than in the countryside. Do you inhabit extensive, convenient shores? Cover the seas with ships, cultivate commerce and navigation. Is your coast merely a place where the sea meets almost inaccessible rocks? Remain barbarians and fish eaters; you will live more peacefully, better perhaps, and surely more happily. In short,

apart from the maxims common to all, each people contains within itself some cause that organizes it in a particular manner and renders its legislation appropriate for it alone. Thus the Hebrews long ago and the Arabs recently have had religion as their principal object; the Athenians, letters; Carthage and Tyre, commerce; Rhodes, navigation; Sparta, war; and Rome, virtue. The author of *The Spirit of Laws* has given a large number of examples of the art by which the legislator directs the institution toward each of these objects.

The constitution of a State is made truly solid and enduring when matters of expediency are so well observed that natural relationships and the laws always agree on the same points and the latter only secure, accompany, and rectify, so to speak, the former. But if the legislator makes a mistake about his objective and adopts a different principle from the one arising from the nature of things—whether one tends toward servitude and the other toward freedom, one toward wealth and the other toward population growth, or one toward peace and the other toward conquest—the laws will imperceptibly weaken, the constitution will be altered, and the State will not cease being agitated until it is either destroyed or changed, and invincible nature has regained its dominion.

BOOK III

ON POLITICAL LAWS, OR ON THE INSTITUTION OF GOVERNMENT³⁹

Before discussing the various forms of government, it will be well to determine the precise meaning that must be given to this word in a legitimate society.

Chapter I: What the Government of a State Is

I warn readers that this chapter requires close attention and that I do not know the art of being clear for those who are not willing to be attentive.

Every free action has two causes that combine to produce it. One is moral, namely the will that determines the act; the other is physical, namely the power that executes it. When I walk toward an object, I must first want to go there and in the second place my feet must take me there. A paralyzed man who wants to run or an agile man who does not want to do so will both remain where they are. The body politic has the same motivating causes; force and will are distinguishable within it in the same sense, the latter under the name legislative power and the former under the name executive power.* Nothing is or should be done there without their cooperation.

We have seen that the legislative power belongs to the people and can belong only to it. It is easy to see similarly, that the executive power cannot belong to the people.

[On Civil Religion]⁴¹

As soon as men live in society, they must have a religion that keeps them there. A people has never subsisted nor ever will subsist without religion, and if it were not given one, it would make one itself or would soon be destroyed. In every State that can require its members to sacrifice their lives, anyone who does not believe in the afterlife is necessarily a coward or a madman. But we know only too well the extent to which the hope of an af-

*I say executive and legislative, not executor's and legislator's, because I treat these two words as adjectives. In general, I do not attach great importance to all these grammatical trifles, but I believe that in didactic works one should frequently pay less attention to usage than to analogy, when the latter makes the meaning more exact.⁴⁰

terlife can bring a fanatic to scorn this life. Take away this fanatic's visions and give him the same faith as the reward for virtue, and you will turn him into a true citizen.

Considered in relation to society, religion can be divided into two types, namely the religion of man and that of the citizen. The former, without temples, altars, or rituals, limited to the purely spiritual cult of the supreme God and to the eternal duties of morality, is the pure and simple religion of the Gospel, or true theism. The latter, confined so to speak to a single country, gives it its own tutelary Gods; its ceremonies, its rituals, its external cult are prescribed by the laws. Outside of the single nation that observes it, everything else is considered infidel, foreign, barbarous; it only extends the duties and rights of man as far as its Gods and its laws. Such were the religions of all ancient peoples, without any exception.

There is a third, more bizarre type of religion that gives men two leaders, two laws, and two homelands, subjects them to contradictory duties, and prevents them from ever being simultaneously pious men and citizens. The religion of the Lamas is like this, as is that of the Japanese and Roman Catholicism. It can be called the religion of the priest.

Considered from a political point of view, each of these three types of religions has its faults. The third is so manifestly bad that it is a waste of time to amuse oneself by proving it.

The second is good in that it combines the divine cult and love of the laws, and by making the homeland the object of the citizens' prayers, it teaches them that to serve the State is to serve God. It is a kind of theocracy in which the State ought to have no priests other than its magistrates. Then, to die for one's country is to be martyred, to disobey the laws is to be impious and sacrilegious, and to subject a criminal to public execration is to deliver him to the celestial anger of the Gods: *sacer est od*.

But this religion is bad in that, being based on error and falsehood, it deceives men, makes them credulous and superstitious, and drowns the true cult of divinity in empty ceremonial. It is bad, too, whenever it becomes exclusive and tyrannical and makes a people bloodthirsty and intolerant to the point where it lives only for murder and massacre, and believes it performs a holy act by killing whoever does not accept its Gods and its laws. It is not permissible to strengthen the bond of a particular society at the expense of the rest of the human race.

If under paganism, when each State had its cult and its tutelary Gods, there were no wars of religion, it was for the very reason that each State, having its own particular cult as well as its government, did not distinguish between its Gods and its laws. War, by being purely civil, was everything it could possibly be. The departments of the Gods were, so to speak, fixed by the boundaries of nations. The God of one people had no rights over another people. The Gods of the pagans were not jealous Gods. They divided dominion over the world peacefully among themselves, and watched its divi-

sion by mortals without concern. The obligation to embrace a religion came only from that of being subject to the laws that prescribed it. Therefore, since there was no other way to convert a people except to subjugate it, it would have been ridiculous to say "worship my Gods or I will attack you." As the obligation to change cult was tied to victory, it was necessary to start by winning before talking about it. In short, far from men fighting for the Gods, it was—as in Homer—the Gods who fought for the men. Before capturing a place, the Romans called upon its Gods to abandon it; and when they let the people of Tarantum keep their angry Gods, it was because at that point the Romans considered them as subject to their own and forced to pay them homage. They let the vanquished keep their Gods as they let them keep their laws. A gold crown for the Capitoline Jupiter was often the only tribute they demanded.

Now if pagan superstition, despite this mutual tolerance and in the midst of culture and a thousand virtues, engendered so many cruelties, I do not see how it is possible to separate those very cruelties from that very zeal, and reconcile the rights of a national religion with those of humanity. It is better, then, to bind the citizens to the State by weaker and gentler ties, and to have neither heroes nor fanatics.

There remains the religion of man, or Christianity—not that of today, but that of the Gospel. Through this saintly, sublime, true religion, men—children of the same God—all acknowledge one another as brothers, and the society that unites them is all the closer because it is not dissolved even by death. However, this same religion, having no particular relation to the constitution of the State, leaves political and civil laws with only the force that natural right gives them, without adding any other force to them; and because of this, one of the greatest supports of society remains without effect in the State.

We are told that a people of true Christians would form the most perfect society that can be imagined. The most perfect in a purely moral sense, perhaps; certainly not the strongest or the most lasting. The people would be subject to the laws, the leaders would be fair, the soldiers would scorn death, I agree. But all that is not enough.

Christianity is a totally spiritual religion which detaches men from worldly things. The Christian's homeland is not of this world. He does his duty, it is true, but he does it with profound indifference for the outcome of the efforts he makes. It matters little to him whether things go well or badly here on earth. If the State is flourishing, he modestly enjoys the public felicity; if the State declines, he blesses the hand of God that weighs heavily on his people. In order for the society to be peaceful and for harmony to last, all citizens without exception would have to be equally good Christians. But if unfortunately there were an ambitious man or a hypocrite—a Catiline, for example, or a Cromwell—he would very certainly get the better of his pious compatriots. As soon as he has learned the secret of how to deceive them

through some ruse and seize a part of the public authority for himself, at once he is powerful. It is God's will to obey him; he is the rod with which He punishes His children. It would be against conscience to chase out the usurper, for it would be necessary to shed blood, use violence, and disturb the public tranquillity. All of that is in no way consistent with the gentleness of a Christian. And after all, what does it matter whether one is free or in chains in this vale of tears. The essential thing is to go to heaven, and resignation is but an additional means of doing so. A slave can be saved just as well as a free man.

What if a foreign war breaks out? The citizens march to combat, none of them thinks of fleeing; they do their duty, but they have little passion for victory. They know how to die rather than to win. What does it matter if they are victors or vanquished? Providence knows better than they what is good for them. Imagine how an impetuous, active, passionate enemy can take advantage of their stoicism. Confront them with those generous and proud peoples consumed by a burning love of glory and homeland. Suppose that your Christian republic is face to face with Sparta or Rome. The Christians will be beaten, crushed, destroyed before they have had time to look around, or they will owe their salvation only to the scorn their enemies will conceive for them. The oath taken by the soldiers of Fabius was a fine one, it seems to me. They did not swear to win or to die; they swore to return as victors, and they did so. Christians would never dare take an oath like that, for they would believe they were tempting God.

But I am mistaken when I speak of a Christian republic; these two words are mutually exclusive. Christianity preaches nothing but servitude and dependence. The spirit of Christianity is so favorable to tyranny that tyranny always profits from it. True Christians are made to be slaves. They know it and are scarcely moved thereby; this brief life is of too little worth to them.

Christian troops are excellent, I shall be told. I deny this. Let someone show me some. For myself, I don't know of any Christian troops. The crusades will be cited. Without arguing over the valor of the crusaders, I shall be content to remark that very far from being Christians, they were soldiers of the priest. They were citizens of the church fighting for their spiritual country. Properly understood, this amounts to paganism; since the Gospel is not a civil religion, any war of religion is impossible among Christians.

Under the pagan Emperors, Christian soldiers were brave; I can well believe it. There was a kind of war of honor between them and the pagan troops. As soon as the Emperors were Christian, this emulation ceased and their troops did nothing more that was worthwhile.

Let us return to right and determine its principles. The right that the social compact gives the sovereign over the subjects does not exceed, as I have said, the limits of public utility. The subjects, therefore, do not have to account for their opinions to the sovereign, except insofar as these opinions matter to the community. Now it matters greatly to the State that each citizen have a religion, but the dogmas of that religion matter to it only in-

so far as they relate to morality. All others are outside of its competence, and everyone can have whatever opinions he pleases beyond that, without the sovereign having to know what they are.

There are positive dogmas, that the citizen should accept as advantageous to the society, and negative dogmas, that he should reject as harmful.

These various dogmas constitute a purely civil profession of faith that it is for the law to prescribe, not exactly as religious dogmas, but as sentiments of sociability without which it is impossible to be a good citizen or a faithful subject. The law cannot obligate anyone to believe them, but it can banish from the State anyone who does not believe them. The law can banish him not for being impious, but for being unsociable; for being incapable of sincerely loving the laws, justice, the homeland, and of giving his life, if need be, for his duties.

Every citizen should have to pronounce this profession of faith before the magistrate, and give express recognition to all the dogmas. If someone does not acknowledge them, he should be cut off from the City, but he should be allowed to take all his goods away with him in peace. If someone who has acknowledged these dogmas behaves as though he does not believe them, he should be punished with death. He has committed the greatest of crimes: he lied before the laws.

The dogmas of the civil religion will be simple, few in number, stated with precision, and without explanation or commentary: the existence of a beneficent, powerful, intelligent, foresighted and providential divinity; the afterlife; the happiness of the just and the punishment of the wicked; the sanctity of the social contract and the laws. These are the positive dogmas. As for the negative ones, I limit them to a single one: intolerance.

Those who make a distinction between civil and ecclesiastical intolerance are mistaken. One leads necessarily to the other; these two intolerances are inseparable. It is impossible to live in peace with people whom one believes are damned. To love them would be to hate God who punishes them. They must necessarily be either converted or persecuted. A necessary and indispensable article in the civil profession of faith is therefore as follows: I do not believe that any person is guilty before God for not thinking as I do about His cult.

I shall go further. It is impossible for intolerant men joined by the same dogmas ever to live in peace among themselves. As soon as they have the right to inspect one another's faith, they all become enemies, alternatively persecuted and persecutors, one against all and all against one. The intolerant person is Hobbes's man; intolerance is war with humanity. The society of the intolerant is like that of demons: they only agree in order to torment each other. The horrors of the inquisition never prevailed except in countries where everyone was intolerant. In these countries, it is purely a matter of chance that the victims are not the executioners.

You must think as I do in order to be saved. This is the horrible dogma that desolates the world. You will never do anything for public peace if you do

not remove this infernal dogma from the City. Whoever does not find it execrable can be neither Christian, citizen, nor man; he is a monster who must be sacrificed for the sake of the tranquillity of the human race.

Once this profession of faith is established, it should be solemnly renewed each year, and this solemnity should be accompanied by an august and simple cult of which the magistrates alone are the ministers, and which revives love of the homeland in all hearts. That is all the sovereign is permitted to prescribe concerning religion. Beyond this, one should allow the introduction of all opinions that are not contrary to the civil profession of faith and all cults that are compatible with the public cult. And neither religious disputes nor holy wars should be feared. No one will think of refining the dogmas when there is so little interest in discussing them. No apostle or missionary will have the right to come and criticize the errors of a religion that serves as the basis for all the religions in the world and that condemns none of them. And if someone comes to preach his horrible intolerance, he will be punished as seditious and rebellious against the laws, unless he prefers to go and relate his martyrdom in his own country. It was very difficult for ancient peoples to understand those troublemaking, seditious men called missionaries. Thus the advantages of the religion of man and the religion of the citizen will be combined. The State will have its cult and will not be the enemy of anyone else's. With divine and human laws being always united on the same object, the most pious theists will also be the most zealous citizens, and the defense of the holy laws will be the glory of the God of men.

Now that there is no longer and can never again be an exclusive national religion, one should tolerate all those religions that tolerate others, provided that their dogmas are in no way contrary to the duties of the citizen. But whoever says there is no salvation outside of the Church should be chased out of the State, unless the State is the Church. This intolerant dogma should be accepted only in a theocratic government; in any other it is absurd and pernicious.

[The Marriage of Protestants]⁴²

It is clear that the civil registration of marriage ought to entail all the civil consequences, such as the status and name of children, the inheritance of goods, etc. The consequences of the sacrament ought to be purely spiritual. But this is not so at all. Everything has been so confounded that the status of citizens and the inheritance of goods depend solely on priests. It is absolutely up to the clergy whether not a single legitimate child is born in the whole kingdom of France, whether no citizen has a right to his father's goods, and whether thirty years from now all of France will be populated solely by bastards. As long as the functions of priests have civil consequences, the priests will be the true magistrates. The assemblies of the clergy of France are, in my opinion, the real government of the nation.

Do you want a certified, yet almost unbelievable example of this? You need only consider how the Protestants in the kingdom are treated.

I see no reason why the clergy of France could not extend to all citizens, whenever it wishes to do so, the rights it currently exercises toward French Protestants. Once experience proved how greatly the revocation of the Edict of Nantes weakened the monarchy, there was a desire to retain in the kingdom, along with the remainder of the persecuted sect, the only remaining source of subjects. Ever since then, these unfortunates, reduced to the most horrible situation in which any people has found itself since the world began, can neither stay nor flee. They are allowed to be neither foreigners, nor citizens, nor men. The very rights of nature are taken from them. Marriage is forbidden; and divested all at once of homeland, family, and goods, they are reduced to the status of beasts. Consider how this unheard-of treatment follows from a sequence of badly conceived principles. The laws of the kingdom have prescribed the solemn forms that legitimate marriages should take, and this is very well conceived. But the administration of these forms has been attributed by laws to the clergy, and combined with the so-called sacrament. The clergy for its part refuses to administer the sacrament to anyone who is not a child of the Church, and one cannot criticize this refusal as unjust. The Protestant, therefore, cannot marry according to the forms prescribed by the laws without renouncing his religion, and the magistrate recognizes as legitimate marriages only those which satisfy the forms prescribed by the laws. Thus the Protestant people is simultaneously tolerated and outlawed. There is simultaneously the wish for them to live and to die. In vain does the unfortunate man marry and in his misery respect the purity of the bond he has established. He sees himself condemned by the magistrates, his family divested of his goods, his wife treated as a concubine and his children as bastards. All of it, as you see, juridically and in consequence of the laws. This situation is unique, and I hasten to put down my pen for fear of yielding to the natural cry which rises and laments to its author.

Experience teaches that of all the Christian sects, Protestantism, as the wisest and gentlest, is also the most peaceful and social. It is the only one in which the laws can maintain their dominion and the leaders their authority.

FRAGMENTS

[The following fragments are found in the *Geneva Manuscript*, on the back of various pages. Fragment 5 appears in the eleventh paragraph of *Social Contract*, I, iv.]

1. That sovereignty is indivisible.
2. Moral signs are uncertain, difficult to calculate. Safety, tranquillity, freedom itself.
3. Several peoples, in the midst of wars and internal dissensions,

nonetheless multiply rapidly. In other governments, on the contrary, peace itself is devouring and consumes the citizens.

4. In a free state, men, often gathered among themselves, live very little with women. The laws of Sparta, rather than guaranteeing property, destroyed it. Where the laws were the mores, the mores became the laws.

5. But it is clear that this supposed right to kill the conquered in no way comes from the state of war. War is not a relation between men, but between powers, in which the private individuals are enemies only by accident, less as citizens than as soldiers. The foreigner who robs, pillages, and detains subjects without declaring war on the prince is not an enemy but a brigand; and even in the midst of war a just prince seizes everything in an enemy country that belongs to the public, but respects the person and goods of private individuals. He respects the rights on which his own power is based. The end of war is the destruction of the enemy State. One has the right to kill its defenders as long as they are armed, but as soon as they lay down their arms and surrender, they cease to be enemies, or rather instruments of the enemy, and one no longer has a right to their lives. One can kill the State without killing a single one of its members. War confers no right that is not necessary to its end.

[the following fragment appears in the Vaughan edition, but not in the *Pléiade*.]

The Pope is the true king of kings in the Roman Church. The entire division of peoples into States and governments is only apparent and illusory. At bottom, there is only one State in the Roman Church. The true magistrates are the bishops, the clergy is the sovereign, the citizens are the priests; laymen are nothing at all. It should . . .

EDITOR'S NOTES

¹Rousseau hesitated between *Du Contract Social* and *De la Société Civile* as the title, and tried three other subtitles: *Essai sur la constitution de l'État*, *Essai sur la formation du corps politique*, and *Essai sur la formation de l'État*, before finally making up his mind (*Pléiade*, III, 1410). On the term "social contract" and the Platonic version of the original subtitle, see Introduction, pages 13–15 and 18–20.

²This chapter was deleted from the final version, perhaps because it is almost apologetic in tone; compare the Introduction to Book I in the final version. The clear distinction between the "nature" of the "social body" and its "relationship" is, however, worth stressing; by "relationships," Rousseau means the "matters of expediency" described in *Geneva Manuscript*, II, iii and II, vi or *Social Contract*, II, xi. The distinction thus parallels the difference between "the idea of the civil state" and the "science of the legislator" (*Geneva Manuscript* I, iv); in the final draft of the *Social Contract*, a similar distinction is made between "principles of right" and "maxims of politics" (III, xviii) or between "right" and "political considerations" (IV, viii). On the implications of these passages, see Introduction, pp. 20–24.

³Although deleted from the final version, this chapter is of great importance. It contains Rousseau's rejection of the concept of a "general will of the human species," which Diderot had proposed in the article *Natural Right* (*Encyclopédie*, Volume V). See Introduction pp. 15–18; Vaughan, I, 440–444; Pléiade, III, 1410–1411. Since Diderot's definition of the "general will" anticipates Kant's "categorical imperative" to a striking extent, the logic of Rousseau's criticism could also be applied to Kantian ethics. Without minimizing the impact of Rousseau's thought on Kant—and the affinities between their ideas—attempts to read Kantian ethics back into Rousseau's political teaching must consider this evidence carefully. Compare Ernst Cassirer, *Rousseau, Kant and Goethe* (New York: Harper Torchbooks, 1963), and Andrew Levine, *The Politics of Autonomy: A Kantian Reading of Rousseau's Social Contract* (Amherst, Mass.: University of Massachusetts Press, 1976).

⁴On Rousseau's argument that the emergence of social "bonds" was preceded by an evolution away from man's "natural needs" and "primitive state," see *Second Discourse*, Part 1 (ed. Masters, especially pp. 126–128) and Part 2 (especially pp. 151–152) as well as *Essay on the Origin of Language*, chap. 2 (ed. Moran and Gode, p. 12) and chap. 9 (p. 32). What the next paragraph calls a "state of nature" among humans who have developed reason, passions, and speech should thus be compared to the "state of war" in *Second Discourse*, Part 2 (ed. Masters, pp. 157–160).

⁵Paragraphs in brackets are crossed out in the *Geneva Manuscript* itself. Note that this passage explains Rousseau's attempt—stated at the outset of the final version—"to reconcile . . . what right permits with what interest prescribes" (*Social Contract*, I, Introduction). In other words, Rousseau will assume that humans are both selfish and capable of rationally defining their self-interest.

⁶So much for Rousseau's supposed praise for the "noble savage"—a phrase which, to my knowledge, he never used. Compare *Second Discourse*, Part 2 (ed. Masters, pp. 150–151) and *Essay on the Origin of Languages*, chap. 9 (ed. Moran and Gode, p. 33): while "savage society" was the "happiest and most durable epoch" of human evolution, the "golden age" of the past was also "barbaric."

⁷Rousseau here restates his attack on the natural law tradition, according to which human society and moral duty are derived from a natural law discovered by "right reason." See *Second Discourse*, Preface (ed. Masters, pp. 94–96) and Part 1 (p. 133). For examples of this natural law tradition, see Aristotle, *Nicomachean Ethics*, V.vii. 1134b–1135a (ed. Ostwald, pp. 131–133); Cicero, *De Re Publica*, III.xxii.33 (ed. Keyes, p. 211); St. Thomas Aquinas, *Summa Theologica*, I–II, Q. 93–94 (in *The Political Ideas of St. Thomas Aquinas*, ed. Bigongiari, pp. 34, 47–50), as well as the works of Grotius, Pufendorf, Barbeyrac, and Burlamaqui cited in Masters, *Political Philosophy of Rousseau*, p. 78, note 88.

⁸This sentence, which Rousseau attributes to "the independent man," is a direct quotation from Diderot's *Natural Right*, where it introduces a speech by what is called a "violent reasoner" who will be "stifled" by Diderot (Vaughan, I, 430–431). In answer to Rousseau's *Second Discourse*, Diderot argues that "man is not only an animal, but an animal who reasons" (Ibid.) Hence the combination of selfishness and rationality—which for Rousseau characterizes man in the "state of war" immediately preceding the social contract (*Second Discourse*, Part 2 [ed. Masters, pp. 155–158])—for Diderot describes a "ferocious beast" who is either "crazy" or "morally wicked" (*Natural Right*, § iv [Vaughan, I, 431]). To represent Rousseau's position before attacking it, Diderot had therefore imagined the following speech being given by a rational egoist in a state of nature: "I am aware that I bring horror and confusion to the human species, but either I must be unhappy or I must cause others to be so, and no one is dearer to me than myself. Don't blame me for this terrible inclination; it isn't freely chosen. It is

the voice of nature, which is never clearer to me than when it speaks in my favor. But is it only in my heart that it is heard with such violence? O men, it is to you that I appeal. Which of you, on the point of dying, would not buy his own life at the expense of the largest part of the human race, if he was sure to do so with impunity and in secret? But,' he will continue, 'I am equitable and sincere. If my happiness requires that I do away with all those existences which intrude on me, it is also necessary that an individual, whoever he is, can do away with my [existence] if it intrudes on his. Reason demands it and I accept. I am not so unjust that I require of another a sacrifice that I do not want to make for him.' " *Natural Right*, § iii (Vaughan, I, 430), italics added to indicate the passage quoted by Rousseau. Diderot's imaginary speaker seems to equate natural right with an unlimited right of self-preservation, as Hobbes did when describing the "natural condition of mankind" as a "time of war, where every man is enemy to every man." Thomas Hobbes, *Leviathan*, Part 1, chap. 13 (ed. Oakeshott, p. 82). It is, therefore, with surprise that we note that Diderot intends the speech to represent Rousseau—and that Rousseau accepts the attribution, treating Diderot as a "wise man." But whereas Diderot had described the speaker as a "violent reasoner," Rousseau quotes the position as that of an "independent man" who seeks "guarantees" against the "unjust undertakings" of others. The disagreement between Rousseau and Diderot, while at first philosophical, led to a bitter personal break; see Masters, *Political Philosophy of Rousseau*, p. 97.

⁹The strongly anticlerical tone of these three paragraphs is retained in the final version: see *Social Contract*, II, vi, second paragraph; II, vii, last three paragraphs; and IV, viii. But when Rousseau dismisses the "theologian" on the grounds that religion tends to produce fanaticism, his phrase has a double meaning: to give the question of natural right "back to the philosopher (*philosophe*)" could mean either to return it to philosophers in general—or to a member of the group known as the *philosophes*, namely Diderot. Compare Introduction, p. 26. On Rousseau's religious teaching, see also *Social Contract*, II, vii; III, viii; and editorial note 135.

¹⁰Again, Rousseau quotes Diderot, who had written: "But if we take from the individual the right to decide the nature of the just and unjust, where will we bring this great question? Where? Before the human species, *which alone ought to decide, because the good of all is the only passion it has*. Individual wills are suspect, they could be good or wicked; but the general will is always good; it has never been mistaken, and it never will be. . . . *The individual should address himself to the general will in order to find out to what extent he should be man, citizen, subject, father, child, and when it is suitable for him to live and to die.*" *Natural Right*, §vi–vii (Vaughan, I, 431–432), italics added to indicate Rousseau's quotation. Note that Rousseau inserts the superlative "greatest" before "good of all." Although *la volonté générale* ("general will") had been used by Fontenelle and Malebranche, it is not unlikely that this passage by Diderot inspired Rousseau's use of the term. See Vaughan, I, 424–427, and ed. de Jouvenel, pp. 105–112. For other antecedents of the notion of a "single" or "general will," however, see Samuel Pufendorf, *Le Droit de la Nature et des Gens*, VII, ii, § 5 and 13 (ed. 1706; II, 203, 213); Hobbes, *Leviathan*, Part 2, chap. 17 (ed. Oakeshott, p. 112); Montesquieu, *Esprit des Lois*, I, iii and XI, vi (ed. Caillois, pp. 237, 398); as well as Rousseau, *Second Discourse*, Part 2 (ed. Masters, p. 169).

¹¹Rousseau here alludes to his notions of "natural pity" and the "conscience" as the "voice of nature": *First Discourse*, Part 2 (ed. Masters, p. 64); *Second Discourse*, Preface (pp. 95–96) and Part 1 (pp. 130–133); *Émile*, IV (Pléiade, IV, 522–523, 547–548) and "Profession of Faith" (Pléiade, IV, 594–606). Rousseau's statement that the *philosophes* "assert that this voice is nonexistent" is confirmed by the absence of any reference to the "conscience" in *Natural Right*. As if addressing Rousseau directly, Diderot had written: "But you will say to me: Where is this general will found? Where

can I consult it? *In the written principles of right of all civilized nations, in the social actions of savage and barbarian peoples, in the tacit conventions that the enemies of the human race make amongst themselves; and even in indignation and resentment, the two passions that nature seems to have even given to animals to make up for the absence of social laws and public vengeance.*" *Natural Right*, § viii (Vaughan, I, 432), italics added to indicate the indirect quotation in Rousseau's next sentence. Both Diderot and Rousseau speak of social practice as a possible source of natural law, but where Rousseau speaks of pity and the conscience, Diderot emphasizes "indignation and resentment"—that is, natural passions that serve as punishments rather than bonds or obligations to others. Compare Masters, *Political Philosophy of Rousseau*, chap. ii.

¹²"Among our ancestors they called 'enemies' those we today call 'foreigners.'" Cicero, *De Officiis*, I.xii. All of the paragraph up to this quotation is a paraphrase of Grotius, *Droit de la Guerre et de la Paix*, II, xv, § 5 (see Pléiade, III, 1414–1415).

¹³By "violent speaker" Rousseau presumably designates the rational egoist or Hobbesian he previously called "the independent man," but whom Diderot calls "a violent reasoner" (compare editorial note 8 above)—unless of course the "violent speaker" is Diderot himself.

¹⁴The first paragraph of this chapter was revised to become Book I, chap. i, of the final version. The second, third, and fourth paragraphs became Book I, chap. vi; the next three paragraphs—"This formula shows . . . enormous abuse"—became Book I, chap. vii; paragraphs eight and nine—"This passage from the state of nature . . . legal title" became the first two paragraphs of Book I, chap. viii; and the section "On Real Estate" became the chapter with that title (I, ix). On Rousseau's revision of Book I, see editorial note 18 below.

¹⁵Compare the final version of this passage, which became the first paragraph of Book I, chapter i: when Rousseau converted these sentences into his explosive introduction, he *personalized* the answers to the two questions. Since his original draft of chapter i in Book I was also personalized, it would seem that Rousseau intentionally begins the *Social Contract* by writing in the first person singular. (Compare Introduction, pp. 27–33.) The negative answer to the question: "How did this change [from freedom to chains] occur?" is sometimes taken as a repudiation of the *Second Discourse*; this is clearly unnecessary, since Rousseau explicitly says that his account of the "events" *between* man's "primitive condition" of freedom and "the bonds of servitude" could "have happened in several ways" and hence that he gives only the "conjectures" that are the "most probable." *Second Discourse*, Part I (ed. Masters, pp. 140–141).

¹⁶Although this sentence was deleted from the final version, it stresses an important point: each individual in society retains—as a *social* right—the use of all land, goods, and personal faculties that are not being devoted to communal activity. Compare *État de Guerre*, quoted in editorial note 26 to the *Social Contract*. As Rousseau indicates, however, it is "only under public protection" that private property can be enjoyed "in safety." Cf. Hobbes, *Leviathan*, Part I, chap. 13 (ed. Oakeshott, pp. 82–82); Locke, *Second Treatise*, chap. xi, para. 137–140 (ed. Laslett, pp. 377–380).

¹⁷This chapter was revised to become Book II, chap. i. For a possible reason for the deletion of the first paragraph, see *Social Contract*, editorial note 36. On the importance of the last paragraph, see Introduction, pp. 18–20.

¹⁸This chapter, with its rejection of alternative principles, was divided and only partially used in the final version. The first two paragraphs were deleted; a long discussion of paternal authority (paragraphs three to seven) appears in *Political Economy*: (pp. 209–211); most of the next two paragraphs are in *Social Contract*, I, ix;

part of the next paragraph in Book I, chapter iv, of the final version, and the remainder essentially rewritten in the first chapters of the definitive text. These details are primarily significant as an indication of Rousseau's reorganization of the work. Whereas the *Geneva Manuscript* begins by rejecting Diderot's notion of a "general will of the human species" (I, ii), poses Rousseau's own principles (I, iii–iv), and only then rejects alternative positions in general (I, v), the *Social Contract* rejects all contrary explanations of the origin of the social bond (I, i–v) before presenting Rousseau's theory of the general will (I, vi–ix)—and ignores Diderot completely. It would be hard to deny that the final organization is more logical than the first draft. On the first paragraph, compare *Social Contract*, editorial notes 3 and 30. Because part of this chapter appears in *Political Economy*, which was published in 1755, some commentators have argued that the *Geneva Manuscript* was written before that date, and that Rousseau's use of a passage required a rewriting of the final version of the *Social Contract* (Pléiade, III, 1417–1418). Compare editorial note 20 below.

¹⁹See especially *Statesman*, 293a. On the difference between paternal and political authority, compare Aristotle, *Politics*, I.i.1252a (ed. Barker, p. 1).

²⁰Rousseau refers to a pro-French propaganda tract generally attributed to Jacob N. Moreau: *L'Observateur Hollandois, ou Lettres de M. Van ** à M. H ** de la Haye, sur l'état présent des affaires de l'Europe*, 8 vols. (La Haye, 1755–1759), II, 41–48. Since the passage is in a letter dated January 2, 1756, the *Geneva Manuscript* as it stands must be subsequent to that date. The substance of this note reflects Rousseau's strong opposition to colonial empires. Moreau, writing to defend French land claims which contributed to the Seven Years' War (1756–1763), had asserted that "we can, in the present dispute, consider as vacant lands all those that are only inhabited by savages" (pp. 44–45). It is not surprising that the author of the *Second Discourse* was outraged by such an attitude toward the native inhabitants of North America. Compare Locke, *Second Treatise*, chap. v, especially para. 41–43 (ed. Laslett, pp. 314–316). Rousseau's omission of this note in the final version (I, ix) might well be due to the fact that it openly criticizes the French claims in a war that was being fought when the *Social Contract* was published. Compare Masters, *Political Philosophy of Rousseau*, pp. 280–282. Rousseau's anticolonialism, while prudently stated, can be traced elsewhere: "Who will we judge as more courageous, the odious Cortez subjugating Mexico by means of gunpowder, deceit, and treachery? Or the unfortunate Guatimozin, stretched out on hot coals by decent Europeans in order to get his treasures, and reprimanding one of his officers, who groaned a bit under the same treatment, by proudly saying: 'And me, am I lying on roses?' " *Dernière Réponse* (Pléiade, III, 91).

²¹Compare *Social Contract*, I, v, first paragraph, and editorial note 28.

²²This chapter became Book II, chap. iv, of the final version. The deletion of the first paragraph was probably necessary because the last paragraphs of the preceding chapter of the *Geneva Manuscript* had also been cut. But this change did obscure the link between Rousseau's "general will" and the traditional concepts of the "common good" or "common interest."

²³This sentence, like most of Rousseau's explicit references to the distinction between "strict right" and what is "appropriate" or "convenient," was deleted in the final version. See Introduction, pp. 18–24.

²⁴Only the last paragraph of this chapter found its way into the final version of the *Social Contract*, serving as the conclusion of Book II, chap. vi. Most of the third paragraph, however, is used in *Political Economy* (p. 214). On the possible reason for Rousseau's deletion of the paragraph which speaks of the State as having "only an ideal and conventional existence," see *Social Contract*, editorial note 36.

²⁵The first two sentences of this chapter became the opening of *Social Contract*, II, vi; the remainder, along with other explicit references to the "science of legislation" in the first draft, was deleted. Compare Masters, *Political Philosophy of Rousseau*, pp. 305–313.

²⁶With the deletion of a long section (paragraphs eight to eleven), this chapter was used as Book II, chap. vii, of the final version. The deleted material refers to the nature of laws, rather than the legislator per se, and thus might well have struck Rousseau as redundant. In addition to the revisions described in the next two notes, Rousseau crossed out the last paragraph and a half in the *Geneva Manuscript* itself.

²⁷This sentence, referring to the codification of Roman law by Justinian, was deleted in the final version. Compare the fragment "Des Lois" (Vaughan, I, 331).

²⁸Rousseau here refers to two formulas of Roman law dating from the Empire: *Quod principi placuit legis habet vigorem*—"Whatever the prince wants has the power of law" (*Digest*, I.iv.1) and *Princeps legibus solutus*—"The prince is not bound by the laws" (*Digest*, I.iii.31). In the final version, Rousseau deleted this reference, instead citing the practice of Roman Decemvirs: *Social Contract*, II, vii and editorial note 56.

²⁹This chapter was divided into three, becoming *Social Contract*, II, viii–x. On the distinction between "right" and "expedience," which was deleted from the final version, see Introduction, pp. 18–24. Rousseau also deleted several other passages in revising the text.

³⁰This paragraph was placed in Book III, chap. vi, of the final version. Rousseau's argument could be taken as a rejection of Plato's conception of philosophic rulers. Compare *Republic*, IX, 591c–592b.

³¹Although this paragraph as written was deleted from the final version, see *Social Contract*, III, xii–xiii.

³²This paragraph and the three following ones were deleted from the definitive text, doubtless because Rousseau himself found them "repetitious."

³³Paragraphs one to three and seven to eleven of this chapter were used in *Social Contract*, II, vi. The remainder—including Rousseau's interesting discussion of natural law at the end—was deleted.

³⁴The rest of this chapter of the *Geneva Manuscript* was not used in the final version, perhaps because the discussion is so closely related to the rejection of Diderot's "general society" (*Geneva MS*, I, ii), which was also cut. It is, nonetheless, a very interesting statement, again emphasizing Rousseau's *historical* interpretation of the foundation of ethical principles. Whereas the tradition speaks of "natural law," therefore, Rousseau speaks of "the rules of rational natural right, different from natural right properly so called." Another conceivable reason for deleting this discussion, however, might have been the dangerous implications if an unscrupulous politician read such statements as: "the law comes before justice," and "there are a thousand cases when it is an act of justice to harm one's neighbor." Compare *Social Contract*, editorial notes 3, 17, 36, and 52.

³⁵In using the French word *civilité*, Rousseau obviously wants to refer to the ancient *Cité* (Greek *polis*) rather than modern "politeness." Compare *Social Contract*, editorial notes 32 and 104.

³⁶*cuique suum* = "to each his own." For Rousseau, the historical origin of human concepts of justice makes it impossible to base either civil rights or ethics directly on the presumed "natural rights" of individuals. As a result, Rousseau bases private property, civil freedom, and the moral duties of civilized individuals on a rational

discovery of "the greatest good of all" rather than on "the private relations between one man and another" (next paragraph). While explicitly an attack on Hobbes, it is interesting to wonder if knowledge of this passage would have influenced Kant.

³⁷This chapter was used, with the deletion of paragraphs three and four, as Book II, chap. xii, of the final version. The reference to what the Romans called "laws of majesty" in paragraph three makes it likely, however, that from the first Rousseau included an extensive study of Rome in the *Social Contract*. Compare Pléiade, III, 1495 and *Social Contract*, editorial note 120.

³⁸This chapter became *Social Contract*, II, xi. The third paragraph was written at the bottom of a page, without an indication of its location in the text; it has been inserted at the point where it was used in the final version (Vaughan, I, 497).

³⁹Only a short fragment of the beginning of Book III is found in the *Geneva Manuscript*, which breaks off at this point. For a detailed description of the manuscript itself, as well as hypotheses on its exact date, see Vaughan, I, 434–435 and Pléiade, III, lxxxii–xc.

⁴⁰This note was suppressed in the final version. Montesquieu had contrasted "*la puissance législative*" and "*la puissance exécutrice*" (*Esprit des Lois*, XI, vi), as Derathé points out in his note to the *Geneva Manuscript* (Pléiade, III, 1426–1427). Rousseau thus sought to correct a grammatical anomaly by proposing more consistent terminology. In the final version however, he uses the form here rejected: "*La puissance exécutive ne peut appartenir à la généralité, comme Législatrice ou Souveraine.*"—"executive power cannot belong to the general public in its legislator's or sovereign capacity." *Social Contract*, III, i.

⁴¹Unlike the manuscript up to the beginning of Book III, which is "written in Rousseau's fairest hand," the chapter "On Civil Religion"—which became *Social Contract*, IV, viii—is "scribbled, in a hand often almost indecipherable" on the back of pages 46–51. Hence, whereas the rest of the *Geneva Manuscript* is apparently written out carefully as if for the printer, this material is clearly Rousseau's own first draft. Based on inferences from Rousseau's correspondence with his publisher Rey, it is probable that the chapter "On Civil Religion" was written in 1761 (Vaughan, I, 434–435; Pléiade, III, lxxxii–lxxxiii; *Confessions*, X [Pléiade, I, 560]). In any event, there are numerous differences between this preliminary sketch and the definitive text of *Social Contract*, IV, viii.

⁴²This note reflects Rousseau's outrage at the condition of his fellow Protestants under the laws of France. An edict of May 14, 1724, forbade Protestants to have their marriages blessed and children baptized by Catholic clergy and prohibited them from leaving the country to get married or from sending their children abroad. These provisions thus extended the official intolerance toward Protestants—which had become royal policy since the revocation of the Edict of Nantes; as a result, it was technically impossible for a French Protestant to have legitimate children and hence to transmit property to his offspring (see Pléiade, III, 1430). This draft was apparently intended to influence the trial of four Protestants in Toulouse; after the accused were executed in February 1762, Rousseau wrote his publisher: "I have deleted the last note, which has become useless now that the fate of our unfortunates has been decided, and concerning which you would perhaps have been given more difficulty [by the censors] than for all the rest of the book. For this note, I have substituted another one which is just as good, and is better directed to the root of the evil." (Letter to Rey, March 11, 1762, cited Pléiade, III, 1506). The replacement, now found in IV, viii, was in turn deleted from the first edition by an anxious Rousseau, afraid of religious persecution. See *Social Contract*, editorial note 142.